TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 588

HENRY E. OPPENHEIMER, PETITIONER,

vs.

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK, ET AL.

No. 670

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK, PETITIONER,

vs.

HENRY E. OPPENHEIMER

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED DECEMBER 22, 1936.

CERTIORARI GRANTED JANUARY 23, 1937. FEBRUARY 8, 1937.

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[fol. 1]

IN UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

HENRY E. OPPENHEIMER, Plaintiff,

against

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK and Henry E. Cooper as Conservator of the Harriman National Bank and Trust Company, Defendants

STATEMENT UNDER RULE XIII

The above entitled action was commenced by the service of the summons and complaint on the above named defendants on the 31st day of May, 1933. The defendants served an amended answer herein on the 6th day of July, 1933. The trial was had on the 4th, 7th and 8th days of October, 1935, before Judge Alfred C. Coxe and a jury. The defendants were not arrested, nor was any bail taken, nor was any property attached. No question was referred to a Commissioner, master or referee. Final judgment was entered on the 14th day of October, 1935. This appeal was allowed on the 30th day of November, 1935.

The names of the parties are given in full above and there has been no change in parties since the commencement of this action. On the 9th day of December, 1933, O'Brien, Boardman, Conboy, Memhard & Early, Esqs., were substituted as attorneys for the defendants herein in the place of Rushmore, Bisbee & Stern, Esqs.; and on the 16th day of August, 1935, Conboy, Hewitt, O'Brien & Boardman, Esqs., were substituted for O'Brien, Boardman, Conboy, Memhard & Early, Esqs.

[fol. 2] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUMMONS

To the Above-Named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a no-

tice of appearance on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable, John C. Knox, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, this 26th day of May, A. D. 1933.

Charles Weiser, Clerk. (Seal.)

Greenbaum, Wolff & Ernst, Plaintiff's Attorneys, Office and Post Office Address, 285 Madison Avenue, Borough of Manhattan, City of New York.

[fol. 3] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

HENRY E. OPPENHEIMER, Plaintiff,

against

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK and Henry E. Cooper as Conservator of the Harriman National Bank and Trust Company, Defendants

COMPLAINT

The plaintiff, by Greenbaum, Wolff & Ernst, his attorneys, complaining of the defendants, alleges:

First. That the defendant, The Harriman National Bank and Trust Company of the City of New York is, and at all the times herein mentioned was a corporation duly organized and existing under and by virtue of the Acts of Congress providing for the organization of national banks, and having its principal place of business in the Borough of Manhattan, City and State of New York.

Second. On information and belief, that heretofore and prior to the commencement of this action Henry E. Cooper was duly appointed conservator of the defendant bank pursuant to the provisions of the Act of Congress commonly known as the "Bank Conservation Act" (Title II, Public Law No. 1, 73d Congress, March 9th, 1933) and that there-

[fol. 4] after said Henry E. Cooper duly qualified and is now acting as such conservator.

Third. That at all the times hereinafter mentioned plaintiff was and still is a depositor in the defendant bank, and that said Bank represented to its depositors that it was peculiarly well qualified to advise its depositors as to investments.

Fourth. That on and about the 1st day of November, 1930, the defendant, The Harriman National Bank and Trust Company of the City of New York stated and represented to the plaintiff that certain shares of the capital stock of the defendant bank belonging to a certain estate, the name whereof was not disclosed to the plaintiff, were being offered for sale; that the fair and reasonable value of said stock was $1512.00 per share; that the market price of said stock was $1500 a share bid and $1600.00 a share asked; and that said stock was not being offered for sale to the general public, but was offered to the plaintiff as a depositor.

Fifth. That plaintiff relying on the fact that said The Harriman National Bank and Trust Company of the City of New York had special and peculiar knowledge of the worth of the said stock which knowledge was not generally available, relied upon said representations and believed the same to be true and was induced thereby to and did on or about the 1st day of November, 1930, pay to the defendant, The Harriman National Bank and Trust Company of the City of New York, the sum of Fifteen thousand one hundred and twenty ($15,120.00) Dollars, and received in exchange therefor ten (10) shares of the capi-
[fol. 5] tal stock of The Harriman National Bank and Trust Company of the City of New York, represented by Certificate No. 4632.

Sixth. On information and belief that said representations and each of them were false and fraudulent and known to said defendant, The Harriman National Bank and Trust Company of the City of New York to be false in that the said shares of stock did not belong to an estate but in fact belonged to the said defendant, and that the fair and reasonable value of said stock was not $1512.00 per share but was worth considerably less than that sum, and that the said

market price as represented by the said defendant bank was not a true and bona fide market price, but was falsely and fraudulently procured by the said defendant bank to be published as the market price.

Seventh. On information and belief, the bid for said shares so represented by said defendant, The Harriman National Bank and Trust Company of the City of New York was a bid by or on account of The Harriman National Bank and Trust Company of the City of New York or procured to be published as the market price of said stock by the acts of said defendant bank, and that said defendant bank concealed such fact from the plaintiff, and that he was ignorant thereof until long after the purchase hereinafter alleged.

Eighth. On information and belief, that the said The Harriman National Bank and Trust Company of the City of New York, had, during the entire year of 1930 prior to November 1st, 1930, purchased large numbers of shares of its stock on a large number of different days, and that [fol. 6] the shares of stock so offered to plaintiff were shares which The Harriman National Bank and Trust Company of the City of New York had purchased and that all said facts were concealed by said bank and its officers from plaintiff, and that he was ignorant thereof until long after the purchase hereinafter alleged.

Ninth. That the said representations so made by the said defendant, The Harriman National Bank and Trust Company of the City of New York, were made with the intent to deceive the plaintiff and to induce him to purchase said shares of stock at the said price of $1512.00 per share.

Tenth. That thereafter and before the plaintiff discovered the falsity of the defendant's representations he received dividends on said stock amounting to $525.00.

Eleventh. That thereafter and before plaintiff discovered the falsity of the defendant's representations he sold two shares of said stock for the sum of Two thousand four hundred and eight ($2,408.00) Dollars and received from the said defendant bank stock certificate No. 7555 for the remaining eight shares of stock.

Twelfth. That thereafter, and on or about the 6th day of May, 1933, as soon as plaintiff discovered that the said

representations were untrue he elected to and did rescind the said transaction with the said The Harriman National Bank and Trust Company of the City of New York and duly notified the defendants and each of them of such election, and duly tendered to the defendants the said certificate of stock numbered 7555 and demanded of the defendants the repayment to him of Twelve thousand one hundred [fol. 7] and Eighty-Seven ($12,187.00) Dollars with interest thereon from November 1st, 1930, being the amount of the original payment less the $525.00 referred to in Paragraph "Tenth" and the $2,408.00 referred to in paragraph "Eleventh" herein.

Thirteenth. That defendants refused and still refuse to accept said stock and have failed and refused to pay to plaintiff the said sum or any part thereof.

Wherefore, plaintiff demands judgment against the defendants for the sum of Twelve Thousand One Hundred and Eighty-Seven ($12,187.00) Dollars, with interest from the 1st day of November, 1930, together with the costs and disbursements of this action.

Greenbaum, Wolff & Ernst, Attorneys for Plaintiff, Office and Post Office Address, 285 Madison Avenue, Borough of Manhattan, City of New York.

[fol. 8] *Duly sworn to by Henry E. Oppenheimer. Jurat omitted in printing.*

[fol. 9] In United States District Court

Amended Answer

The defendants above named, by Rushmore, Bisbee & Stern, their attorneys, for their amended answer to the complaint herein, allege:

1. Upon information and belief, deny each and every allegation contained in paragraphs "Third", "Fourth", "Fifth", Sixth", "Seventh", "Eighth", and "Ninth" of the complaint.

2. Upon information and belief, deny each and every allegation contained in paragraph "Tenth" of the complaint, except that they admit that the sum of $525. was paid to the

plaintiff as dividends on certain shares of stock of the defendant, The Harriman National Bank and Trust Company of the City of New York, registered in the name of the plaintiff.

3. Deny any knowledge or information thereof sufficient to form a belief with respect to any of the allegations contained in paragraph "Eleventh" of the complaint, except that they admit that a certain certificate bearing the number 7555, representing 8 shares of the stock of said The Harriman National Bank and Trust Company of the City of New York, was issued in the name of the plaintiff.

4. Deny each and every allegation contained in paragraph "Twelfth" of the complaint.

5. Deny any knowledge or information thereof sufficient to form a belief with respect to any of the allegations contained in paragraph "Thirteenth" of the complaint, except that they admit that the defendants refuse to accept the stock therein mentioned, and have failed and refuse to pay to the plaintiff he sum therein mentioned or any part thereof.

For a First, Separate, and Complete Defense:

6. Upon information and belief, that heretofore and long prior to the commencement of this action and prior to the [fol. 10] date of the alleged rescission mentioned in the complaint and of the alleged tender of stock to the defendants, the plaintiff had knowledge of all the acts and things complained of in the complaint and of the facts constituting the alleged fraud mentioned in the complaint or of facts which put him on notice of said alleged fraud, and that while in the possession of such knowledge, the plaintiff continued to treat as his own the shares of stock alleged in the complaint to have been purchased by him and continued to exercise acts of ownership with respect thereto, and ratified, approved, and confirmed the alleged purchase of said stock mentioned in the complaint.

For a Second, Separate, and Complete Defense:

7. The defendants here repeat and reiterate each and every allegation contained in paragraph "6" of this amended answer with the same force and effect as if here set forth in full.

8. Upon information and belief, that since the date of the alleged purchase of stock mentioned in the complaint and since the time when the plaintiff acquired the knowledge aforesaid, and long prior to the date of the alleged rescission mentioned in the complaint and of the alleged tender of stock to the defendants, said stock, to the knowledge of the plaintiff, declined in value, by reason whereof the plaintiff is estopped from bringing this action

Wherefore, defendants demand judgment, dismissing the complaint, together with the costs and disbursements of this action.

Rushmore, Bisbee & Stern, Attorneys for Defendants, Office & P. O. Address, No. 20 Pine Street, Borough of Manhattan, New York City.

[fol. 11] *Duly sworn to by Henry E. Cooper. Jurat omitted in printing.*

[fol. 12] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

HENRY E. OPPENHEIMER, Plaintiff,

against

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK and Henry E. Cooper as Conservator of the Harriman National Bank and Trust Company of the City of New York, Defendants

JUDGMENT

The issues in the above entitled action having been duly brought on for trial before Hon. Alfred C. Coxe, United States District Judge, and a jury, at a Term of this Court, held on the 4th, 7th, 8th days of October, 1935, and the issues having been duly tried, and both the plaintiff and the defendants having moved the Court for a directed verdict, and pursuant thereto a verdict for the defendants having been duly directed by the Court on the 8th day of October, 1935;

Now, on motion of Conboy, Hewitt, O'Brien & Boardman, attorneys for the defendants, it is

Adjudged that the defendants, The Harriman National Bank and Trust Company of the City of New York and

Henry E. Cooper, as Conservator of The Harriman National Bank and Trust Company of the City of New York, of No. 100 Park Row, in the Borough of Manhattan, City of [fol. 13] New York, have judgment against the plaintiff, Henry E. Oppenheimer, upon the issues in this action; and it is further

Adjudged, that the said defendants, The Harriman National Bank and Trust Company of the City of New York and Henry E. Cooper, as Conservator of The Harriman National Bank and Trust Company of the City of New York, recover of the plaintiff, Henry E. Oppenheimer, the sum of $30.00, the costs as taxed, and that said defendants have execution therefor.

Dated, New York, October 14, 1935.

Charles Weiser, Clerk.

[fol. 14] In United States District Court, Southern District of New York

[Title omitted]

Bill of Exceptions

Before Hon. Alfred C. Coxe, D. J., and a Jury

New York, October 4, 1935; 10:30 A. M.

Appearances:

Greenbaum, Wolff & Ernst, Esqrs., Attorneys for Plaintiff; Newman Levy, Esq., Edward S. Greenbaum, Esq., and Benjamin Kaplan, Esq., of Counsel.

Conboy, Hewitt, O'Brien & Boardman, Esqrs., Attorneys for Defendants; David Asch, Esq., William J. Butler, Esq., and Hobart L. Brinsmade, Esq., of Counsel.

A jury was impaneled, examined and duly sworn.

[fol. 15] Motion to Amend Answer

Mr. Asch: I now move to amend the answer, according to a notice which we have served.

Mr. Levy: And we object, your Honor, on the ground that the proposed amendment does not constitute a defense.

The Court: Well, I will not pass on that now. I will allow

the amendment to be made tentatively, and will reserve decision on whether I will let it stand.

Mr. Asch: May it be incorporated in the record?

The Court: Yes.

(Note.—The amendment to the answer, above referred to, appears in full below, as follows:)

"9. At all times since on or about March 4, 1933, the defendant, The Harriman National Bank and Trust Company of the City of New York, has been and now is insolvent.

"10. Subsequent to November 1st, 1930, defendant The Harriman National Bank and Trust Company of the City of New York, incurred debts, which said debts can not be paid out of the assets of the said defendant The Harriman National Bank and Trust Company of the City of New York."

(Opening Statements to the Jury on Behalf of the Plaintiff and Defendants are Omitted.)

Henry E. Oppenheimer, the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. Levy:

Q. Mr. Oppenheimer, you are the plaintiff in this action, are you not?

A. I am.

[fol. 16] Q. And what is your occupation?

A. I am a retired merchant.

Q. What business were you in formerly, before you retired?

A. Importing precious stones.

Q. And what was the name of your business?

A. Henry E. Oppenheimer & Company.

Q. Henry E. Oppenheimer & Company was a trade name, was it not?

A. Registered, yes, in the County Clerk's Office.

Q. And who owned Henry E. Oppenheimer & Company?

A. At various times there were various partners. Of late, I have been the sole owner.

Q. Were you a depositor in the Harriman National Bank?

A. I was.

Henry E. Cooper, as Conservator of The Harriman National Bank and Trust Company of the City of New York, of No. 100 Park Row, in the Borough of Manhattan, City of [fol. 13] New York, have judgment against the plaintiff, Henry E. Oppenheimer, upon the issues in this action; and it is further

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Charles Weiser, Clerk.

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[fol. 16] Q. And what is your occupation?

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Q. What business were you in formerly, before you retired?

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Q. Henry E. Oppenheimer & Company was a trade name, was it not?

A. Registered, yes, in the County Clerk's Office.

Q. And who owned Henry E. Oppenheimer & Company?

A. At various times there were various partners. Of late, I have been the sole owner.

Q. Were you a depositor in the Harriman National Bank?

A. I was.

Q. And you had an account there in the name of Henry E. Oppenheimer & Company?

A. I did.

Q. At what branch?

A. The main office, 44th Street and Fifth Avenue.

Q. Were you acquainted with Mr. Joseph W. Harriman, the president of the Harriman National Bank?

A. I was.

Q. How long had you known him?

A. We went to school together; we were in the same school when we were boys. Then our roads diversed; and I met him again in later years.

Q. You met him when he became president of the Harriman National Bank?

A. No. I met him when we opened an account with the Harriman Bank.

Q. Now, let us get down to October 28, 1930. On that day did a gentleman named Williamson call on you?

A. Yes, sir.

Q. And did Mr. Williamson present to you a letter?

A. He did.

Q. I show you a letter and ask you whether this is the letter that was brought to you by Mr. Williamson on that [fol. 17] day (handing paper to witness)?

A. It is. (Handing paper to Mr. Levy.)

Mr. Levy: I offer this in evidence.

Mr. Asch: No objection.

(Paper marked Plaintiff's Exhibit No. 1.)

Mr. Levy: This is a letter, gentlemen, written on the engraved stationery of the Harriman National Bank and Trust Company, New York, and there is also engraved at the top "Office of the President," dated October 28, 1930, addressed to Mr. Henry E. Oppenheimer. (Reading to the jury Plaintiff's Exhibit No. 1.)

That is signed "Joseph W. Harriman," with the initials "JWH" typewritten at the bottom of the letter.

Q. Now, Mr. Oppenheimer, upon receipt of that letter, did Mr. Williamson introduce himself to you and tell you who he was?

A. He did.

Q. Suppose you tell us, as nearly as you can recall, what the entire conversation was; what he said to you and what you said to him.

A. Well, the conversation took about an hour, I should say. He introduced himself as a vice-president of the bank, speaking for Mr. Harriman. On reading that letter of introduction, I took it at its face value.

Mr. Asch: We object to that, and move to strike out that he took it at its face value.

The Court: Objection overruled. Motion denied.

Mr. Asch: Exception.

Q. Go on, Mr. Oppenheimer.

A. In other words, I believed what was written——

[fol. 18] Mr. Asch (interposing): We object to what he believed, and move that it be stricken out.

The Court: Objection overruled. Motion denied.

Mr. Asch: Exception.

The Witness: May I go on?

The Court: Yes.

Q. Yes, go ahead.

A. I believed the letter was written in perfect good faith; in other words, that there was something in the air; that he wanted to bring some of the depositors in line to get he same benefits as some stockholders had been getting. What they were, I didn't know. Then, Mr. Williamson spoke to me on that score——

Q. (Interposing.) What did he say to you?

A. In the first place, I told him I was not inclined to buy any stock, that I was not in condition to keep investments that were only paying two and one-half per cent.

Q. What did he say about the stock?

A. He asked me whether I would be inclined or whether I would buy some stock, and I told him I was not in position to carry a two and one-half per cent investment, which that was, he said; and then he told me that there was a chance of making more money on it; that it would improve; in other words, that they had cut a melon two and a half years previously, and he expected that they would cut another in eighteen months or two years; and consequently the investment would show more than two and a half per cent.

Q. Did he say anything to you about where the stock had come from?

A. He first discussed the market value of the stock, which was then quoted at $1500 or $1600—it was offered at $1600, [fol. 19] and $1500 bid, and he offered to sell me any part

of the 27 shares at $1,512 I think—stating that that was below the market; that while the stock was closely held, and could not be gotten in the regular market, that this stock came from an estate, which had 27 shares of it, and that is how he could offer it to me at that price. I am under the impression that he told me that the bank——

Mr. Asch: (Interposing.) One moment please. I move to strike out his impression.

Mr. Levy: All right.

Q. Tell us what you recollect—your best recollection?

A. May I state what my memory is?

Q. Yes, that is what I want.

A. As near as I remember, he said the bank was paying $1500 for the stock, and was giving it to me for $1,512. I still did not want it, but in the Harriman letter there was something there about "for mutual benefit" or "mutual advantage", and I thought I would take the stock and see what it came to, after he told me and assured me the stock was worth more than the $1600, but that was a market condition, he said, that existed at the time, and that all bank stocks that really had value——

Q. (Interposing.) Just tell us the rest of the conversation. What else did he say to you and what else did you say to him?

A. With reference to the financial condition?

Q. With reference to the subject-matter of the conversation; with reference to your buying stock, was there anything else said about that?

A. There was plenty said in that hour, yes.

Q. Well, tell us as much of it as you can recall.

A. It was mostly a discussion about the value of the stock.

[fol. 20] Q. And what did he say?

A. The stock at one time had been quoted at $2400. When it was quoted $1600, I naturally questioned the stock, and to that he said "Oh, that is all due to conditions; it is worth a great deal more money."

Q. What did you do about it then? What was the end of the conversation?

A. The end of the argument was that I took 10 shares of stock.

Q. Did you tell Mr. Williamson that you would take 10 shares of the stock?

A. I did. In other words, I think I said "you win" or something of that kind. I am not sure whether I signed a blank application for the stock or not. I think I might have.

Q. In saying to him "you win"——

A. (Interposing.) Or words to that effect.

Q. (Continuing.) —just what did you mean by that?

A. I meant "you win the argument."

Q. That he had convinced you?

A. Yes, that he had convinced me.

Q. And in making your decision to buy the stock, did you do that in reliance upon what Mr. Williamson had told you?

A. Altogether, yes.

Q. Altogether?

A. Yes.

Q. Now, the next thing—and if Mr. Asch does not object, I think we can move very quickly, if I might lead him over the preliminary matter——

Mr. Asch (interposing): Oh, yes.

Q. The next thing you did was to send a check to the bank for that purchase, is that right?

A. I think they sent me a bill first, and then I sent the check with the bill to be receipted.

Q. I show you a paper and ask you whether this was the bill that they sent you (handing paper to witness)?

[fol. 21] A. Yes, this is the bill (handing paper to Mr. Levy).

Mr. Levy: I offer this in evidence (handing paper to Mr. Asch).

Mr. Asch: No objection.

(Paper marked Plaintiff's Exhibit No. 2.)

Q. I think we might tell the jury that your eyesight has been bothering you lately, and that is the reason that we are not moving as rapidly as we would otherwise.

A. I think the jury notices it. I can tell you, gentlemen of the jury, that I can not see any place at all. I do not know what anyone looks like in the court room.

The Court: That is a rather unfortunate dilemma.

The Witness: Yes, it is the result of diabetes.

Q. You received this bill, did you?

A. Yes.

Q. I show you now a check and ask you whether this is your check that you mailed to the Harriman Bank (handing paper to witness)?

A. That is the check (handing paper to Mr. Levy).

Mr. Levy: I offer this in evidence (handing paper to Mr. Asch).

Mr. Asch: No objection.

(Paper marked Plaintiff's Exhibit No. 3.)

Q. When you mailed this check, Mr. Oppenheimer, you returned to the bank, did you not, this confirmation slip that has been marked in evidence as Plaintiff's Exhibit No. 2?

A. By that you mean the bill from the Harriman Bank?

Q. Yes.

A. Yes, I did.

[fol. 22] Q. And did you subsequently receive this bill, Plaintiff's Exhibit No. 2, with a rubber stamp on it, from the bank? Look at this rubber stamp (exhibiting). Was it sent back to you with this green rubber stamp on it on the other side (indicating)?

A. Yes.

Mr. Levy: I will read these to you, gentlemen. (Reading to the jury Plaintiff's Exhibits Nos. 2 and 3.)

Q. After mailing that check to the bank, Mr. Oppenheimer, did you receive a letter acknowledging receipt of the check, and is this that letter (handing paper to witness)?

A. I did.

Mr. Levy: I offer this in evidence (handing paper to Mr. Asch).

Mr. Asch: No objection.

(Paper marked Plaintiff's Exhibit No. 4.)

Mr. Levy: Gentlemen, this is on the stationery of The Harriman National Bank and Trust Company (reading to the jury Plaintiff's Exhibit No. 4).

Q. And after that did you receive the certificate of stock for ten shares?

A. Yes, sir.

Q. And was that certificate accompanied by this letter, which I now show you (handing witness paper)?

A. It was (handing paper to Mr. Levy).

Mr. Levy: I offer this in evidence (handing paper to Mr. Asch).

Mr. Asch: No objection.

(Paper marked Plaintiff's Exhibit No. 5.)

Mr. Levy: This letter, gentlemen, is also on the printed stationery or engraved stationery of the Harriman Na-
[fol. 23] tional Bank and Trust Company (reading to the jury Plaintiff's Exhibit No. 5.)

Q. Now, Mr. Oppenheimer, the certificate of stock that came with that letter for the ten shares, you haven't that certificate any longer, have you?

A. No, sir.

Q. You sold two shares subsequently?

A. Yes, two shares, and sent the original certificate to the Harriman Bank to break it up and give me an eight-share certificate.

Q. Did you receive any dividends at any time on this stock?

A. Three dividends.

Q. Amounting in all to how much?

A. $525, payable July and January; $175 each.

Q. Did you subsequently sell two shares of the stock which you had?

A. I did.

Q. And when was that?

A. I think it was in May, 1932.

Q. And how much did you sell them for?

A. On the first sale I got $1,208, and the second one, I think I got a little under $1,200—$1,190 and something.

Q. The total amount that you received for your two shares of stock was $2,408?

A. That is right.

Q. And when you sold that stock, you turned in your certificate for ten shares and received one back for eight shares?

A. Yes.

Q. And is this the certificate that you received for the eight shares of stock (handing witness paper)?

A. Yes.

Mr. Levy: I offer this in evidence (exhibiting paper to Mr. Asch).

Mr. Asch: No objection.

(Paper marked Plaintiff's Exhibit No. 6.)

[fol. 24] Q. Now, Mr. Oppenheimer, at the time you sold those two shares of stock, which you said was when? May?

A. May, 1932.

Q. May, 1932?

A. Yes.

Q. You sold that stock for less than you paid for it?

A. Yes.

Q. And did you have a conversation about that time with Mr. Joseph Harriman with reference to your sale of the stock?

Mr. Asch: We object to any conversation held at that time. There is no allegation in the complaint of any fraud other than in the inception of this transaction.

The Court: Was Mr. Harriman still the president of the bank at that time?

Mr. Levy: Yes, he was, at the time he had this conversation.

The Court: I will permit it.

Mr. Asch: Exception.

Q. Will you tell us what conversation you had with Mr. Harriman in May, 1932?

A. Within a few days after selling the two shares, I saw Mr. Joe Harriman and told him I had sold them, and asked him why the stock dropped from 1500 to 1200 within five or six days, and he simply said it was a market condition at the time, and he thought I was foolish to sell it, and that I should not have done it.

Q. Go on. What else did he say? You had quite a conversation with him at that time, did you not?

A. Yes, we had quite a conversation about the bank stock.

Q. And what did he tell you?

A. He said it was worth a great deal more; that the stock would all come back in about a year or a year and a half, [fol. 25] and I would regret the whole deal that I had made, if I sold it.

Q. So as a result of that conversation, you——

A. (Interposing.) I held the other eight shares.

Q. You held the other eight shares?

A. Yes.

Q. Now, did you have another conversation with Mr. Harriman with reference to the same subjects in October of that year?

A. When the shares dropped down——

Mr. Asch (interposing): We object to any conversations in October, 1932. Mr. Harriman at that time was no longer the president of the bank.

Mr. Levy: The purpose of this is that the defendant claims ratification; that Mr. Oppenheimer had full knowledge of the fraud perpetrated on him and did nothing about it; and I am endeavoring to show that he was lulled into security by Harriman.

The Court: But Harriman was no longer the president of the bank in October, 1932.

Mr. Levy: He was the chairman of the board at that time.

Mr. Asch: Yes, he was.

The Court: I will permit the testimony, if he was the chairman of the board.

Mr. Asch: Exception.

Q. Go ahead and tell us the conversation that you had with Mr. Harriman in October, 1932?

A. I called on Mr. Harriman after banking hours, when the stock had dropped from 1200 to 800, and I asked him whether he thought I should let it go, and he said, "no," that I should not; I should not sell my shares; that he himself had every share that he had ever bought. As I under-
[fol. 26] stood him at the time he had seven million dollars invested in Harriman Bank shares, and had never sold a share of it.

Q. Where did this conversation take place?

A. I will not put it by the dates, but I will by the market quotations—when the stock dropped from 1200 to 800.

Q. And where was it?

A. Oh, in their Fifth Avenue office.

Q. Did Mr. Harriman give any explanation why the stock had gone down?

A. Yes; he said that there was a trust company which held a large block of the stock as security—as collateral—and that they wanted to compel him, Mr. Harriman, to buy that stock, so that they were depressing the price; and he said he was not going to buy it, and he would wait until it got away down, and then he would pick it up for himself.

Q. Did he say anything else that you recall?

A. That's enough.

Q. Well, as result of that conversation what did you do or not do?

A. I held the stock, hoping that he was right.

Q. Now, I next want to call your attention to the spring of 1933, on an occasion when you saw something in a newspaper. Do you remember that?

A. I do.

Q. Will you tell us what it was?

A. I saw in the New York Times a notice of a suit brought by Mrs. Singleton——

Mr. Asch (interposing): We object to this as incompetent, irrelevant and immaterial, if your Honor please.

The Court: Objection overruled.

Mr. Asch: Exception.

[fol. 27] The Witness (continuing): brought by a Mrs. Singleton against the Harriman Bank, and I went——

Q. What was it about that notice in the newspaper that attracted your attention particularly?

A. That the facts that were—it was not a notice of suit, but notice of the suit and the fact that Mrs. Singleton was under this same misapprehension as I had been working under. In other words, I thought my letter was a personal letter written to me, but here I found it was just a facsimile of a letter sent to a lot of people, because she only bought two shares of stock.

Q. You mean a newspaper story and not a notice?

A. A report, it is called, I think.

Q. A report?

A. Yes.

Q. And upon reading that, what did you do about it?

A. I saw my lawyer.

Q. And who was your lawyer?

A. Mr. Edward Greenbaum.

Q. The gentleman seated at this table (indicating)?

A. Yes.

Q. Did you have a conversation with Mr. Greenbaum in reference to that matter then?

A. I certainly did. I told him I felt——

Mr. Asch (interposing): We object to the conversation, your Honor.

Mr. Levy: Yes. Never mind that.

Q. Did Mr. Greenbaum, shortly after that conversation, have a conversation with you in reference to the same matter?

A. Yes, sir.
Q. Shortly after your first visit?
A. He did.
Q. Now, on the occasion of your second visit did Mr. Greenbaum—and just answer this yes or no—did he tell [fol. 28] you whether or not he had made any investigation into the matter that you had brought to his attention?
A. Yes, sir.
Q. And did he report to you the result of his investigation?
A. Yes, sir.
Q. And what did he tell you?

Mr. Asch: Oh, I object to that.
The Court: Sustained.
Mr. Levy: All right.

A. He told me——
Q. (Interposing.) No. The objection is sustained.
A. All right.

Mr. Levy: My purpose in asking the question, your Honor——
The Court (interposing): Oh, I understand the purpose. We are getting into so much that is entirely extraneous to the issue in this case. What did you do after you talked with Mr. Greenbaum?
The Witness: The second time, your Honor?
The Court: At any time.
The Witness: I told Mr. Greenbaum——

Q. (Interposing.) No. What did you do?

The Court: Yes, what did you do about it? Did you sell your stock or try to sell it or what?
The Witness: Neither. I told Mr. Greenbaum to take steps to bring an action, to sue the bank.
Q. But before that did you ever meet the Conservator of the Harriman National Bank, Mr. Cooper?
[fol. 29] A. Yes, after the conversation with Mr. Greenbaum, I did.
Q. Did you call on Mr. Cooper?
A. I did.
Q. And on that occasion were you accompanied by me?
A. I was.

Q. And did you have a talk with Mr. Cooper at that time?

A. I did.

Q. Tell us what happened on the occasion of your visit to Mr. Cooper?

A. I tendered the eight shares of the bank stock to Mr. Cooper, and told him I was making a formal tender to cancel the entire contract of purchase and sale. I gave him a letter stating my position, with a carbon copy, and asked him to sign the receipt—the carbon copy as a receipt. He read the letter; he did not sign the carbon copy as a receipt, but he gave me another letter acknowledging the receipt of my service on him.

Q. And what did he do about accepting the stock which you tendered to him?

A. He refused to accept it.

Q. He refused to accept it?

A. Yes.

Q. Now, the letter that you presented to Mr. Cooper—I have served a notice to produce——

Mr. Asch (interposing): Have you a copy?

Mr. Levy: Yes, I have.

Mr. Asch: All right.

Mr. Levy: I offer this copy in evidence.

Mr. Asch: No objection.

(Paper marked Plaintiff's Exhibit No. 7.)

Mr. Levy: Gentlemen, this letter was presented by Mr. Oppenheimer to the Conservator of the bank, Mr. Henry E. Cooper (reading to the jury Plaintiff's Exhibit No. 7).

Mr. Asch: If the Court please, I of course made no objection to this letter, but may it be understood that it is [fol. 30] not proof of the facts recited therein, but simply that he delivered such a letter?

The Court: I receive the letter for what it is worth. We will take a recess here for a couple of minutes.

(Short informal recess.)

By Mr. Levy:

Q. Now, Mr. Oppenheimer, I will ask you one thing more: You still have the eight shares of stock, have you not?

A. I have.

Q. And was an assessment levied on you by the Controller of the Currency?

A. Yes, sir.

Mr. Asch: That is objected to as immaterial.

The Court: Objection sustained.

Mr. Levy: Exception, please.

Q. Just one thing more: Did you have any knowledge or information or intimation that the statements that had been made to you by Mr. Williamson and Mr. Harriman were untrue, prior to seeing the story in the newspaper about the Singleton case?

A. No, sir.

Mr. Asch: One moment. We object to that question, because it assumes that the statements made were untrue.

The Court: Objection overruled.

Mr. Asch: Exception.

Q. Just answer the question, please?

A. No, sir, I had not.

[fol. 31] Mr. Levy: Your witness.

Cross-examination.

By Mr. Asch:

Q. Had you other bank accounts besides the Harriman National Bank account?

A. Beg pardon?

Q. Did you, at the time you bought this stock, have other bank accounts besides the one in the Harriman Bank?

A. No, I did not—oh, yes; I had a personal bank account uptown—a housekeeping account.

Q. And you had had some experience with banks prior to that time, I take it, had you?

A. I had.

Q. Had you at any time bought bank stock other than the stock of the Harriman Bank?

A. I had.

Q. Do you still hold any of it?

A. No.

Q. What banks did you buy stock of, may I ask?

A. The Chase, the Irving, United States, Guaranty, and Midland Marine, and Royal Bank of Canada.

Q. About what time did you buy these various bank stocks?

A. 1929, most of them.

Q. Within a year prior to the time you bought the Harriman bank stock?

A. I think so.

Q. Did you buy some of them after you had bought the Harriman stock?

A. No, sir.

Q. Approximately how large were your holdings in the stock of other banks?

A. None of them were over ten thousand dollars or eleven thousand dollars.

Q. You also had various transactions in securities, other than this Harriman Bank stock, with or through the Harriman Bank, did you not?

A. Yes, sir.

Q. For instance, you had the Harriman Bank, on one occasion, sell some 60 shares of Equitable Trust Company [fol. 32] stock for you, did you not?

A. The Equitable?

Q. Equitable Gas bonds. Excuse me. Withdrawn. At one time you had the Harriman Bank sell some bonds of the Equitable Gas Light Company for you, did you not?

A. I may have. I don't recall.

Q. Do you recall——

A. (Interposing.) There might have been six bonds, but not sixty.

Q. Well, there were $6,000 worth?

A. All right.

Q. Do you recall anything about it?

A. I imagine I had them for a long time, and they came due, didn't they?

Q. See if that refreshes your recollection as to that transaction that you had with the bank (handing paper to witness)?

A. (After examining.) I should say these bonds matured, and they collected it for me.

Q. Do you recall receiving a slip such as that?

A. Oh, yes (handing paper to Mr. Asch).

Mr. Asch: Is there any question about this (handing paper to Mr. Levy)?

Mr. Levy: No.

Q. Of course, you did not sell these Equitable Gas Light bonds to the bank itself, did you?

A. I might have, at that.

Q. Well, have you any recollection about it (handing paper to witness)?

A. Oh, I see. They matured within sixty days of this date, so I sold them to the bank, and let them collect it.

Q. Don't you recall, Mr. Oppenheimer—and I will refresh your recollection, if I can—that you directed them to sell these gas light company bonds for your account?

A. The chances are I did.

[fol. 33] Q. And they were sold for your account, then?

A. I imagine so.

Mr. Asch: I now offer in evidence this slip.

Mr. Levy: I object to it as irrelevant and immaterial.

The Court: Objection overruled.

Mr. Levy: Exception.

(Paper marked Defendants' Exhibit A.)

Mr. Asch: Exhibit A, if I may state briefly to the jury, is a confirmation slip concerning the Equitable Gas Light Company bonds, which the witness has identified. (Reading to the jury Defendants' Exhibit A.)

The Witness: May I see that once more?

Q. Yes, surely (handing paper to witness).

A. All right. Thank you (handing paper to Mr. Asch).

Q. Now, during the period following the purchase of this stock of the Harriman Bank, did you follow the newspaper quotations of the stock of the Harriman Bank?

A. I followed most—yes, I followed the quotations on it.

Q. And you also, I take it, followed the quotations of the stocks of other banks in which you held stock?

A. Yes, that was the reason.

Q. And I assume that you knew that during this period following October, 1930, the prices of bank stocks were going down pretty generally, were they not?

A. Yes, I knew that.

Q. And then there came a time, did there not, in the spring of 1932 when there were no further quotations on the Harriman Bank stock; is not that so?

A. I am trying to recall 1932.

[fol. 34] Q. Well, I will put it another way: Did you observe the time when the Harriman stock ceased to be quoted?

A. In the fall of 1932 it ceased to be quoted, I think.

Q. The point of my question is this: You followed the quotations from time to time, and if at a certain time the papers ceased to quote them, you noted that fact, did you not?

A. Yes, I would have noticed that.

Q. If I may suggest, the fact is that the quotations ceased in July, 1932, and that being so, you would have noted it after that time?

A. Yes.

Q. Did you also note that for some weeks prior to the time that the quotations on Harriman Bank stock ceased, that the only quotations were the bid and the asked quotations?

A. Yes, sir, those are the only ones I saw.

Q. Did you know what the bond department of the Harriman Bank was—what its relationship generally to the Harriman Bank was?

A. I took for granted—no; but I took for granted that it was the bond department of the Harriman Bank and Trust Company.

Q. Did you not know, from your experience with banks, that departments which are named "the bond department" or that have similar names, are really the departments where they carry on investments for customers?

A. Yes.

Q. You knew that, did you not?

A. I did not know that they carried on investments for customers particularly, but their own affairs too.

Q. When you sent orders for the bank to deal in or to buy or to sell for you or to collect for you, do you recall what department you communicated with?

A. I do not. I generally went up to the fourth floor, which it turns out was the bond department.

[fol. 35] Q. So you went to the bond department when you wanted the bank either to sell or to buy securities for you or to collect on securities for you?

A. Yes.

Q. And, of course, you knew in those instances that you were not dealing with the bank as a principal? Do you understand the question?

A. I understand the question, yes, but I was dealing with the bank as a principal.

Q. When you went to the bond department of the bank

A. (Interposing) Yes.

Q. And told them to sell or, for instance, to collect on these Equitable Gas Light bonds?

A. According to that slip, I sold to the bank the Equitable Gas Light bonds. You have the sales slip there.

Q. But you are interpreting this. Do not let us get into any controversy. You knew at that time that the bank was not going to buy that for its own account, and put it in its portfolio, did you not?

A. I can not say that I knew that, no.

Q. You did not anticipate that they were putting this six thousand dollars worth of Equitable Gas Light bonds into their portfolio?

The Court: What difference does it make?

Mr. Asch: Because it is a parallel to this case.

The Court: But it is all speculation—that is, not in securities, but mental speculation.

Mr. Asch: He testified on direct examination that he thought about this other transaction, and I want to show that this transaction was the same.

The Court: Well, what he thought about the other transaction was permitted to go in evidence without objection.

[fol. 36] Mr. Asch: That may be. I think that has been sufficiently covered, however.

Q. I think you testified to the fact that in October, 1932, you went to Mr. Harriman and called his attention to the fact that the stock had dropped to 800?

A. Right.

Q. Is it not the fact that by September, 1932, the stock had dropped to 100 and to 90?

A. He was made chairman of the board about that time, was he not?

Q. In July he was made chairman of the board.

A. Yes, I will not place the date. In 1932, in the summer, I think I was in Europe.

Q. I do not want to press you unduly, but I would like to have about when this conversation with Mr. Harriman

A. (Interposing.) The first conversation took place when I sold the stock for 1200. Then, when the stock went down to 800, I saw him again. You have that date there. When

was it? What was the date that the stock dropped to 800?

Q. I am afraid I will not be permitted to tell you, but my record shows that soon thereafter it was down to 300, and then to 265, and then 188, and I have no record of eight shares. I would like to get the approximate date. I am not trying to argue or to trip you. I just want to get the facts straight.

A. All right.

Q. So I would like to know about when it was that you had this conversation with Mr. Harriman about $800 a share?

A. I think it must have been before October, 1932.

Q. As matter of fact, was it not before August, 1932?

A. Yes, it ought to have been before July, because it dropped down and went out of sight in October.

[fol. 37] Q. Is it not the fact that it was shortly after the time when you yourself sold it around $1,200?

A. I should say so. I should say back in June, from those facts.

Q. By the way, do you recall how large your bank deposit with the Harriman Bank was at or about the time you bought this stock?

A. Yes; it was somewhere over $30,000.

Q. And do you recall what your bank deposit was at the time the bank closed in March, 1933?

A. Very well. It was $6,700,

Mr. Asch: That is all.

Redirect examination.

By Mr. Levy:

Q. Just one question: You have testified to owning other bank stocks. Did you ever take any legal proceedings with reference to the other banks?

Mr. Asch: That is objected to.

The Court: Sustained.

Mr. Levy: Exception. That is all, Mr. Oppenheimer.

(Witness excused.)

COLLOQUY

Mr. Levy: Now, with the Court's permission, I would like to read the stipulation and the testimony which we have stipulated to read into the record.

The Court: How much is it?

Mr. Levy: Oh, there is a lot of it.

The Court: I renew my suggestion that perhaps we can eliminate reading a great deal of the testimony, on the ground, principally, that the Court might very well take judicial notice of most of the facts that have been brought [fol. 38] out in these other cases affecting the Harriman Bank.

Mr. Levy: I am perfectly willing to put any statement on the record that Mr. Asch and I can agree upon.

The Court: We might sit here for three or four days, and at the end of that time I have no doubt whatever that any reasonable person would come to the conclusion that misrepresentations were made by Mr. Harriman in connection with the sale of this stock and other stocks, and that a fraud was perpetrated. Now, I do not see that you can get much more than that. I have no doubt that that is what the proof is going to establish. I have seen it in other cases, and it has been proven in criminal proceedings against Harriman, and the facts have also been proved and recognized in other courts in this city, if not in this State. I do not know what more you are going to get by producing here and reading a record of all these different legal proceedings, and going over it over and over again.

Now, I do not know whether it is possible at this time to get some kind of concession which will obviate the necessity of going through all that. I have just as much patience as the rest of you, and probably as much as the jury have, and if they can stand it, then I can.

Mr. Asch: Your Honor understands, of course, that I have no brief for Harriman and do not make any claim that he was not crooked.

The Court: Then, probably in four or five lines you can cover the situation, and then comment on it before the jury, in the event the case is submitted to them.

Mr. Asch: Our point, of course, is that Harriman was not representing the bank in anything that he did here, and [fol. 39] that the bank got no benefit from it, and that the bank is not liable for anything he did. We can practically concede, for the purposes of the argument, that there was a fraud practiced by Harriman, if that will serve Mr. Levy's purpose?

The Court: My point is that it is not necessary for either of you to go to the trouble of reading verbatim all this tes-

timony, and that you can perhaps agree upon three or four lines or perhaps two or three pages which would cover the substance of all of it, or you may paraphrase it in your own language, and let it go at that; and in the end I have no doubt that the fact will be established that misrepresentations of fact were made, and that Mr. Oppenheimer relied on them, and that a fraud was perpetrated by Harriman.

Mr. Asch: That is, as between him and Harriman—between Mr. Oppenheimer and Mr. Harriman?

The Court: Yes.

Mr. Levy: Suppose I offer in evidence certain paragraphs, which I will refer to by number in the stipulation?

The Court: Why not offer the whole stipulation?

Mr. Levy: There are certain things that we have stipulated, to which I want to object on legal grounds.

The Court: All right, I will overrule your objections, and give you an exception.

Mr. Levy: I mean that certain facts are stipulated subject to their relevancy and materiality, which I deem to be irrelevant and immaterial. I will just read the numbers of the paragraphs and the exhibits that are referred to may be deemed to have been marked in evidence.

[fol. 40] The Court: All right.

Mr. Levy: And I will read them to the jury, if necessary.

I now offer in evidence the stipulation,* with reference to the following paragraphs:

Paragraph 1; paragraph 2; paragraph 3; paragraph 4; paragraph 5; paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 13-A, 14, 15, 16, 17, and paragraph 18 five and one-half lines, up to the figures "1931."

Mr. Asch: In connection with that offer, the balance of that paragraph deals with what he testified to on cross-examination.

Mr. Levy: All right. Then, the first paragraph of No. 18, and the second is matter of defense.

Mr. Asch: For or against whoever it may be, may not the whole paragraph be put in now, rather than putting it in piecemeal? It is matter of defense offered by me.

The Court: What paragraph is that?

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* This stipulation is marked herein Plaintiff's "Exhibit 8 with Exhibits Annexed Thereto"—so far as received on behalf of the plaintiff; and marked Defendants' Exhibit AA—so far as received on behalf of the defendants.

Mr. Asch: Eighteen.

The Court: What is the part that is offered?

Mr. Levy: I am offering the first paragraph of the 18th.

The Court: What is the purpose of it?

Mr. Asch: I would like to get through with the stipulation by offering, out of order, as it were, the balance of paragraph 18.

The Court: Do you object?

Mr. Levy: Yes, I object to that. I object on legal grounds to any evidence of any transactions relating to the Harriman Securities Corporation. It is our contention that Mr. Oppenheimer dealt with the bank, and never knew of the [fol. 41] existence of the Harriman Securities Corporation. The defense, as I understand, is that he was not dealing with the bank, but with the affiliate securities company. When the times comes, I want to object to that, and for that reason I am not offering that portion at the moment.

The Court: I think it would be better for you to finish with what you want to offer.

Mr. Asch: Then, I will reserve that for part of my case.

Mr. Levy: I have offered the first paragraph of No. 18, down to the words "transfer to him."

Now, the 19th paragraph, and the 20th, 21st, the 22nd, the 25th and the 26th. I have omitted the 23rd and 24th.

As I understand, all the testimony referred to is now incorporated in the record, and the exhibits referred to in those paragraphs of the stipulation are also incorporated?

The Court: If you understand so, I think I can understand it too—without reading them.

Mr. Levy: Yes, without reading them. That is our case. The plaintiff rests.

Plaintiff rests.

MOTION TO DISMISS

Mr. Asch: I now move to dismiss the complaint, if the Court please, on the ground that no cause of action has been proven against The Harriman National Bank and Trust Company of the City of New York or against Mr. Cooper, as Conservator thereof.

The Court: I will deny your motion at this time, with an exception to you.

Mr. Asch: Yes, exception. I now offer in evidence, if the [fol. 42] Court please, the balance of paragraph 18th of the stipulation referred to by counsel for the plaintiff.

Mr. Levy: I object to it, if the Court please, on the ground that it is incompetent, irrelevant and immaterial, and as this raises a legal question which goes to the essence of the case, I would like to be heard on it.

The Court: What is the particular materiality of that, as applied to this case?

Mr. Asch: The materiality is to show that all this stock which at any time was in the suspense account, that the dividends on that stock went to the Securities Corporation's account, and that it was a bona fide account of the Securities Corporation.

The Court: Is there connection made by the other testimony to show that all the stock, including the Oppenheimer stock and the Singleton stock, was treated in that fashion?

Mr. Asch: Oh, yes.

Mr. Levy: That is their contention.

The Court: Is there that connection by the other testimony which is in the case, which has not already been read? I do not know whether you get my point?

Mr. Levy: I do not think I understand.

The Court: Well, this paragraph 18th, which Mr. Asch now wishes to have incorporated in the record, as I understand applies to some stock owned by a man or a woman named Singleton——

Mr. Asch (Interposing): No. Pardon me. It applies equally to all the stock—Singleton and Jaskow and all of them. This particular certificate which Mr. Oppenheimer got came out of the name of Kelly.

The Court: All right. The objection is overruled.

[fol. 43] Mr. Levy: Exception. May I state the ground of my objection on the record?

The Court: Yes, certainly.

Mr. Levy: The admission of this in evidence is objected to by the plaintiff on the ground that The Harriman National Bank was either acting as principal or as an agent in this transaction. Now, if it was acting as principal, the internal transactions in the bank and its internal affairs with this Securities Corporation are irrelevant and have nothing to do with the issue before the Court.

If The Harriman National Bank was acting as an agent, it was acting, according to the testimony that has been presented here, as agent for an undisclosed principal. It is undisputed that Mr. Oppenheimer did not know the affiliate, the Securities Corporation, and that he thought he was dealing with The Harriman National Bank, and the letters in which the representations were made and the other documents were all on the stationery of the bank, and he dealt with officers of The Harriman National Bank, and never heard about the Securities Company at all. So if the bank was acting in this transaction as agent of the affiliate, it was acting for an undisclosed principal; and under the cases which I have presented to your Honor in my memorandum of law, the bank is now estopped from going behind that transaction to show that Mr. Oppenheimer was actually dealing with an undisclosed principal.

The Court: I understand your point fully, but I still adhere to my ruling. It seems to me that these are facts which the defendant has a perfect right to show, so that the entire transaction may be before the Court. As to [fol. 44] the legal effect of those facts, that is a different question, of course.

Mr. Levy: May I have an exception

The Court: Yes, certainly.

Mr. Asch: And I take it, if the Court please, that the checks which are referred to in paragraph 18 are to be regarded as in evidence, with the same effect as if marked again, so that they need not be offered separately?

The Court: Yes.

Mr. Asch: They are identified by the marks on them in the other case.

I now offer in evidence paragraphs numbered 23 and 24 from the stipulation.

Mr. Levy: And I object to those paragraphs, if the Court please. They relate to quotations on the stock of banks other than The Harriman National Bank, and I object on the ground that they are irrelevant and immaterial here.

The Court: Are those paragraphs 23 and 24?

Mr. Asch: Yes, sir.

The Court: What have the quotations with respect to other banks to do with this case?

Mr. Asch: It shows a general decline during most of this period, and then a sudden break in the Harriman stock, which took place in July, 1932.

The Court: I can not see that quotations with respect to banks other than the Harriman Bank are material here. And I will so rule. I will permit paragraphs numbers 23 and 24 to become part of the record in this case, but limited to the bid and asked prices on the Harriman stock, and the other quotations with respect to the Harriman Bank, but not the other banking institutions shown in those two paragraphs of the stipulation.

[fol. 45] Mr. Asch: I now offer in evidence, if the Court please, a deposit ticket dated July 7, 1930; another deposit ticket dated July 3, 1931, and a credit ticket dated January 3, 1931, showing the deposit to the credit of The Harriman Securities Corporation of the amounts involved in the checks which are referred to in paragraph 18 of the stipulation.

The Court: I assume that the ruling I have already made with respect to the balance of that paragraph 18 is applicable to this offer.

Mr. Levy: It will not be necessary for me to repeat my objection each time?

The Court: No.

Mr. Levy: I may have a blanket objection?

The Court: Yes, and I will overrule the objection and give you an exception.

Mr. Levy: I object on the further ground that these papers are not binding upon Mr. Oppenheimer. They relate to transactions between the bank and its affiliate.

The Court: Objection overruled.

Mr. Levy: Exception.

Mr. Asch: To further shorten the trial, may it be conceded that witnesses competent to testify, if called would testify that these deposits were actually made to the credit of The Harriman Securities Corporation?

The Court: I assume that is so.

Mr. Asch: Is that to be assumed, without stipulation, your Honor?

The Court: Yes.

Mr. Asch: All right. Now, please mark these (handing papers to the clerk).

(Papers marked collectively Defendants' Exhibits B.)

Mr. Asch: I do not know whether it will be conceded or [fol. 46] whether I shall have to proceed to prove that on

all transactions which took place in the suspense account, the charge for transfer stamps, documentary stamps, was made against the Securities Corporation, and either paid by way of a charge or by actual payment.

Mr. Levy: Our position is that Mr. Oppenheimer had no knowledge of what was going on between the bank and its affiliate. I assume that it is conceded that Mr. Oppenheimer was not acquainted with the transactions that the bank was having with its affiliate?

Mr. Asch: Oh, yes.

Mr. Levy: And so far as the transactions themselves are concerned, if Mr. Asch says that something happened at the bank, I will take his word for it.

The Court: It will not then be necessary to call anybody to establish those facts by testimony.

Mr. Asch: And I ask that it be conceded further that on all these transactions the Harriman Securities Corporation paid—of course, only on one side of the transactions—paid a commission to the bank for its services. Is that conceded?

Mr. Levy: Yes, that is conceded.

Mr. Asch: I also ask whether it will be conceded that the suspense account which we have referred to here was credited with the amount of the money received from Mr. Oppenheimer?

Mr. Levy: Yes; if you say that is the fact, we concede it.

Mr. Asch: So the suspense account shows (exhibiting paper to Mr. Levy).

Mr. Levy: All right.

Mr. Asch: Will it also be conceded that none of the shares [fol. 47] of Harriman Bank stock ever appeared in the investment portfolio of the Harriman Bank or in the book recording its investments, but did appear, from time to time, as it was cleaned out, as an investment of the Securities Company on the Securities Company's investment account or books?

Mr. Levy: Yes, that is conceded.

Mr. Asch: Will it also be conceded that during all the time at which or during which—the period at and following the period of the purchase by Mr. Oppenheimer of these shares, there was in force a note of the Harriman Securities Corporation to The Harriman National Bank and Trust Company, pledging certain collateral, not directly connected with this transaction, but which note also provided that

the Harriman Bank should have a general lien for any indebtedness for the Securities Company to it upon any property of the Securities Company which the Harriman Bank might have possession of?

Mr. Levy: That is conceded.

Mr. Asch: All right. Now, will it further be conceded that on March 3, 1933, The Harriman National Bank and Trust Company was insolvent?

Mr. Levy: What is the date?

Mr. Asch: The date of the bank holiday.

Mr. Levy: Oh, yes.

Mr. Asch: Will it further be conceded that after the purchase by Mr. Oppenheimer of the stock in question here, new creditors or creditors on new money came in to the bank in an amount exceeding some ten million dolllars?

Mr. Levy: Let me see. With respect to the last two concessions, I concede the facts, but I object to them on the ground that they are irrelevant and immaterial.

[fol. 48] The Court: What is the materiality of them?

Mr. Asch: They might become so. There are certain cases in which new money might become involved. The right of a stockholder to rescind is limited.

(Informal discussion among counsel and the Court, at the bench, off the record.)

The Court: I will overrule the objection, and give you an exception.

Mr. Levy: Yes, exception.

Mr. Asch: It is now five minutes to one o'clock, and the next concession I want to ask for involves some figures.

The Court: All right. We will take a recess until a quarter past two.

Recess.

(After Recess.)

2:15 P. M

Mr. Asch: May I ask Mr. Oppenheimer just one or two more questions?

The Court: Yes.

HENRY E. OPPENHEIMER, the plaintiff, recalled.

Further cross-examination.

By Mr. Asch:

Q. Mr. Oppenheimer, when you had the conversation with Mr. Williamson concerning the proposed purchase of stock by you, did he not mention to you that there was included in the sale something besides the stock of the Harriman Bank itself?

A. No, sir.

[fol. 49] Q. Didn't he tell you that the Securities Corporation had been making large profits?

A. He mentioned the Securities Corporation; he mentioned the affiliate; that is what he called it.

Q. And he told you at the time, did he not, that each share of stock of the Harriman Bank carried with it a participation in the Securities Corporation?

A. No, sir.

Q. When did you first learn that fact?

A. I never learned it.

Q. Did you examine your stock certificate when you received it?

A. I did not.

Q. The stock certificate that you first received was in the same form as the certificate you now hold for 8 shares, was it not?

A. Yes.

Q. Except for the ten shares and the date?

A. Yes.

Q. But he did mention the fact that there was a securities affiliate, did he not?

A. Yes.

Q. Now, I think you told me in your cross examination previously that you held stock in the Bank of United States?

A. I did.

Q. And they had a securities affiliate too, did they not?

A. I didn't know. May I say a word?

Q. Yes.

A. The other bank stocks, I went in the market and bought and sold. This was brought to me, and simply sold to me. I never bought Harriman Bank stocks in the regular market.

Q. You also held stock in the Chase Bank?

A. Right.

Q. And they had a securities affiliate?

A. No doubt. I guess they all had.

Q. And when you bought the stock of any one of these banks, had you not inquired or did you not find out what the function of the securities affiliate of the bank was?

A. No, sir.

Q. You knew nothing about that?

A. Nothing.

[fol. 50] Mr. Asch: All right. That is all.

(Witness excused.)

COLLOQUY

Mr. Asch: Now, instead of asking for a number of specific concessions, it may be that we can shorten this very materially if three concessions will be made, as follows:

First, that the Securities Corporation was an entity separate and apart from the Harriman Bank.

Mr. Levy: I concede that it was an entity. "Separate and apart" is a larger concession than I think I can make.

Mr. Asch: I may have to go into proof of the facts to establish that, if I can not get a concession.

The Court: It was a separate corporation.

Mr. Asch: Yes.

Mr. Levy: Just leave out "separate and apart".

The Court: All of the stock of which was owned either by the shareholders of the Harriman Bank or——

Mr. Asch: (Interposing.) That is not quite right. The entire stock of the Harriman Securities Corporation was held by trustees under an agreement, and each certificate of the Harriman Bank stock recited that the registered holder of the Harriman Bank stock was entitled to a beneficial interest in an equivalent amount of shares to that represented by the certificate of stock, of no par value, of the Harriman Securities Corporation, a New York corporation, under the terms of a certain agreement dated April 26, 1925, between these trustees and the subscribers.

Mr. Levy: The trust agreement is in evidence.

Mr. Asch: Yes.

The Court: I think that is sufficient.

[fol. 51] Mr. Asch: Then, secondly, that the stock sold to

Mr. Oppenheimer was sold by the Harriman Bank as agent for the Harriman Securities Corporation.

Mr. Levy: No, I will not concede that.

Mr. Asch: Then, I will have to go into the proof on that.

I ask whether the plaintiff will stipulate that the stock sold to the plaintiff came out of the Harriman Securities Corporation suspense account?

The Court: Well, you have all those facts——

Mr. Asch (interposing): I do not think we have that fact. In checking up, I think that is missing. I doubt very much if that is in the record. It is the fact, of course, but I doubt if the record shows it.

The Court: Well, if you have any doubt, I have not.

Mr. Levy: I think that is the fact, and I have no objection to conceding that.

Mr. Asch: All right. I ask whether they will stipulate that the stock in the suspense account was held by the Harriman Bank for the account of the Securities Corporation as a customer?

Mr. Levy: If you will omit the words "as a customer"

Mr. Asch (interposing): All right. It was held for the account of the Securities Corporation.

Mr. Levy: Yes.

Mr. Asch: And further that the Securities Corporation was the beneficial owner of the stock?

Mr. Levy: No; that is a conclusion. We can not concede that.

Mr. Asch: That from time to time all the stock held in the Harriman Securities Corporation suspense account was [fol. 52] actually transferred to the Securities Corporation for cash, either by way of check or by charge to its bank account.

Mr. Levy: Will you repeat that, please.

Mr. Asch: Let us have the reporter read it.

(Record read.)

Mr. Levy: I will concede that, yes.

Mr. Asch: That the Securities Corporation was a corporation engaged in the business of buying and selling securities for investment, and had done a large and substantial business in connection with securities of various kinds.

Mr. Levy: We concede that.

Mr. Asch: That at the time of the transaction with Mr. Oppenheimer, Mr. J. W. Harriman was the owner of about 2300 shares of the stock of The Harriman National Bank and Trust Company standing in his own name, and that the Jama Corporation, which was a wholly owned corporation —that is, which was a corporation wholly owned by Harriman and his immediate family—owned about 2550 shares, and that Mr. Williamson who has been mentioned here was the owner of about 142 shares.

Mr. Levy: I concede that.

Mr. Asch: And that the total outstanding shares were 20,000.

Mr. Levy: All right. That is conceded.

Mr. Asch: That the new creditors, previously referred to, who put in in excess of ten million dollars since Oppenheimer bought his stock, have not been paid in full.

Mr. Levy: I guess we will concede that.

Mr. Asch: And that the debit balance in the suspense account represented an indebtedness from the Securities Corporation to the bank.

Mr. Levy: Yes.

[fol. 53] Mr. Asch: That the assets of The Harriman National Bank and Trust Company are not sufficient to pay its creditors and depositors in full?

Mr. Levy: As to that, I will make the concession if I may be permitted to amplify it. I would like to have it appear in the record that a claim has been asserted by the Comptroller of the Currency against the clearing house banks to enforce their guarantee, and that the matter is now in liquidation, and in the event that the claim is settled favorably to the bank or the receiver of the bank, the creditors of the bank may all be paid in full.

Mr. Asch: I can not quite concede it in that form, because there is a serious question as to whether that guaranty applies to creditors, and not only to depositors.

Mr. Levy: In any event, the matter is now in litigation, and I can not concede the fact that they will not be paid in full.

Mr. Asch: Will it be conceded—and I think it will be——

The Court (interposing): Up to the present time, the depositors of the bank have not been paid in full?

Mr. Asch: No.

The Court: And a letter has been sent out by the Comp-

troller of the Currency levying an assessment against the stockholders?

Mr. Asch: Yes, for the full amount.

The Court: Those two facts, I think, are sufficient.

Mr. Asch: Yes, I think so.

Mr. Levy: In connection with that, may it appear in the record that Mr. Oppenheimer has paid his assessment in full?

Mr. Asch: I do not think it is material, but it may appear in the record, subject to my objection as to its materiality. [fol. 54] Mr. Levy: Without waiving any rights in this present litigation.

Mr. Asch: It will also be conceded, I think, that Frederick V. Goess was duly appointed receiver and qualified as such in November, 1933, and is still acting as such?

Mr. Levy: Yes.

Mr. Asch: That is, receiver of The Harriman National Bank and Trust Company, as liquidator of the bank.

Mr. Levy: Yes.

Mr. Asch: And that seems to complete it. Yes, that completes my case, Mr. Levy.

Mr. Levy: It is understood, of course, that all these concessions that I have just made are subject to the blanket objection I made at the beginning as to relevancy and materiality?

The Court: Yes.

Mr. Levy: And I have an exception on that ground?

The Court: Yes.

Mr. Levy: Now, I am going to ask if Mr. Asch will concede that Mr. Colombo, the bookkeeper of The Harriman National Bank and of the Securities Corporation, if he were called as a witness, would testify to certain testimony which I would like to read.

Mr. Asch: If you will show me where it is——

Mr. Levy (interposing): Starting at page 190.

Mr. Asch: If you will just indicate what it is——

Mr. Levy (interposing): I will state the substance of his testimony, and perhaps we can get a concession.

Mr. Colombo testified that on a number of occasions during the year 1930, starting with January 31, 1930, the Harriman Securities Corporation suspense account was [fol. 55] cleaned out and was closed out completely, and subsequently in July, and then again later in the year.

Now, each of those transactions came about in this way: The suspense account on these various occasions had stock of the Harriman Bank in it. The bank was advised that on those dates referred to national bank examiners were coming around to examine the bank, and on these dates the Harriman Securities Corporation borrowed various sums of money from The Harriman National Bank.

On July 31, 1930, they borrowed $20,000, and with that $20,000 they purchased 13 2/3 shares of The Harriman National Bank and Trust Company stock for $18,850. So that when the bank examiners came around, there was no Harriman Bank stock in the suspense account; it was all in the affiliate account. After the bank examiners had concluded their examination, the transaction was reversed, and the stock was transferred back to the bank, and the loan was repaid.

That appeared on January 31, 1930; then again on June 13, 1930, the suspense account was again——

Mr. Asch (interposing): What page?

Mr. Levy: Page 193 and following pages. On the morning of June 13, 1930, there was a cash balance of $13,767. The books indicate that there was a loan put on by The Harriman National Bank in the amount of $100,000—a Harriman National Bank loan of $100,000 to the Securities Corporation on that date; and on that date, with the money that they borrowed from the bank, the Securities Corporation, according to this testimony, purchased 62 shares of Harriman Bank stock, so when the bank examiner came [fol. 56] around there was no more bank stock left in the suspense account. I am in error as to that. On that occasion the examination was not made by a national bank examiner, but by a firm of accountants, who were auditors of the bank—Hurdman & Cranston.

Now, on the 3rd of July, 1930 the suspense account was again closed out. On the 3rd of July Mr. Colombo testified that it appears from the books of the Securities Corporation that on July 3rd it purchased from the bond department of The Harriman National Bank 146 shares of Harriman Bank stock, in the amount of $218,698.50, and that money was borrowed from the bank, and on that date, on the 3rd of July, 1930, an examination was conducted by the national bank examiners under Mr. W. F. Sheehan, head examiner, and there was a reversal of that transaction, and the 62 shares were resold to the bond department, and that with the

moneys or proceeds of that transaction the loan was repaid to the Harriman National Bank.

Mr. Asch: I can not concede it quite in that form. Mr. Colombo testified—and this testimony is referred to here, and was given by Mr. Colombo on the criminal trial of Mr. Harriman, but that testimony was simply Mr. Colombo's interpretation at the time from the books. He was not testifying to facts. I can not concede that on various occasions——

Mr. Levy (interposing): I am reading the gist of it.

Mr. Asch: I know, but that is where he was asked what he testified to on the criminal trial, and not on the Jaskow trial, and it appeared on the Jaskow trial that when he had testified in the criminal case, he was only giving his own [fol. 57] interpretation of certain entries. I will concede, that at various times when a bank examiner was coming in, the Securities account was cleaned out. I will not concede, however, that that cleaning out was by a sale to the Securities Corporation. It was, in fact, as the records which we have in evidence show, a payment at that time by the Securities Corporation of the debit balance which then stood against them; and by the same token, when any stock was transferred in to the Securities Corporation, it was not a sale to the Harriman Bank at all, but a transfer to the securities account, and with a credit balance in favor of the Securities Corporation.

Mr. Levy: You concede, of course, that the money was borrowed?

Mr. Asch: I concede that certain of the money was borrowed from the bank. There is no question about that.

The Court: It was merely a paper transaction, and I suppose it is a conclusion to be derived——

Mr. Asch (interposing): Exactly.

Mr. Levy: And the transaction would subsequently be reversed.

Mr. Asch: Of course, another thing is the inference from what Mr. Levy read, that all of the cleaning out or striking of balances occurred at the time of the bank's examination—and that is not so. Some of them happened to occur at those times. Of course, we would argue that that was the natural thing to do.

Mr. Levy: It is also conceded that these transactions were reversed shortly after?

Mr. Asch: I am not certain of that. It may be, but subject to correction, I will concede that thereafter certain of them went back into the account. I am not certain of that.

[fol. 58] Mr. Levy: Is the account in evidence?

Mr. Asch: The suspense account?

Mr. Levy: Yes.

Mr. Asch: I do not think so.* I would like one more concession,—that Mr. Goess, the receiver, if called as a witness, would qualify as an experienced banker, and would testify that the designation "suspense account" was a proper designation for the account which was carried by the bank for the benefit of the Securities Corporation,—indicating by that name that such account was not being cleared each day, but for the convenience of the customer was carried over and cleared only at certain periods. I ask for that concession in this case.

Mr. Levy: Yes, that is right.

Mr. Asch: All right, that is all.

The Court: I understand that both sides rest?

Mr. Levy: I have one or two more questions of Mr. Oppenheimer, if I may.

The Court: All right.

HENRY E. OPPENHEIMER, recalled.

Redirect examintion.

By Mr. Levy:

Q. Mr. Oppenheimer, at the time you bought the stock which has been testified to in this case, did you understand that you were dealing with the Harriman Securities Corporation?

A. No, sir.

[fol. 59] Mr. Asch: That is objected to as immaterial, if your Honor please.

The Court: I will permit him to testify as to what he did understand.

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*Certain excerpts from the suspense account are to be deemed in evidence, pursuant to stipulation of counsel, infra, p. 146. Those excerpts are printed herein at pp. 147-148.

Q. Will you tell us what you did understand with reference to that?

A. That I was dealing with the Harriman Bank—the Harriman National Bank and Trust Company.

Q. Did you know of the existence of the securities affiliate?

A. I didn't know anything about it. My first knowledge was when I came here this morning and heard Mr. Asch mention their name. I didn't know what they were called. There was talk that there was an affiliate corporation. That is what he said. I heard of that twice in four or five years, but nothing authentic; nothing but gossip.

Q. And it was your understanding that you were dealing with the Harriman National Bank?

A. Only.

Q. Only?

A. Yes.

Q. Did Mr. Williamson ever mention the securities affiliate to you as the seller of this stock?

A. No, sir.

Q. Did he ever communicate with you in any way at any time——

A. (Interposing.) Decidedly not.

Q. Or did anyone from the bank communicate with you with reference to the affiliate?

A. Not at all.

Q. Did you ever receive any communication from the Securities Corporation?

A. None whatsoever.

Q. At any time at all?

A. Never.

Mr. Levy: That is all.

[fol. 60] Recross-examination.

By Mr. Asch:

Q. I think you told me before that the securities affiliate was mentioned in your talk with Mr. Williamson?

A. He mentioned that there was an affiliate corporation, but who held it or how it was held or the name of it or where their offices were, he never told me.

Mr. Asch: All right. That is all.

Mr. Levy: That is all.

(Witness excused.)

Mr. Levy: The plaintiff rests.
Mr. Asch: The defendants rest.
The Court: Then, the record shows that both sides rest.

MOTION TO DISMISS

Mr. Asch: Yes. I now move to dismiss the complaint herein on the ground that the plaintiff has not shown that Mr. Harriman or Mr. Williamson were authorized to represent the bank in making these statements that they made to Mr. Oppenheimer; that on the proof, the bank did not obtain the benefit of the money received from Mr. Oppenheimer.

MOTION FOR DIRECTION OF VERDICT

I also move to direct a verdict, on the same grounds, upon the evidence as it appears here. There is no agency for the bank on the part of Harriman or Williamson established, and on the ground that the bank did not receive the money from Mr. Oppenheimer; and, of course, no rescission could lie against anyone except the person who received the money; and also that no claim can be made against the bank for a fraudulent representation made by [fol. 61] one of its officers, unless the bank received the benefit of that representation—and on the evidence here, the bank did not receive such benefit; and on the further ground that in view of the insolvency of the bank and the appointment of a conservator prior to the date of the claimed rescission, no rescission can lie.

The Court: Do you wish to discuss this question now? I mean, do you wish to discuss it as a question of law? I should think that might be helpful.

Mr. Asch: I thing that might be well. However, I do not know that I could say much more to your Honor than is contained in the opinion, handed up to you by Mr. Justice Dore.

The Court: I think it would be helpful, from my standpoint, to have oral discussion at this time; and I can see no particular necessity for having the jury stay here and listen to that discussion.

Mr. Asch: No.

The Court: There has been a suggestion that next Mon-

day is a holiday. I do not know how you gentlemen feel about taking a holiday on Monday. I am willing to leave it entirely in your hands.

We will take a recess now for a few minutes, and meanwhile you can talk that over amongst yourselves, as to whether you prefer to come back here on Monday morning or on Tuesday morning of next week. I leave it entirely in your hands, and when you come to a conclusion let me know, or let the clerk know, and we will take a recess until whatever time you say—whatever it may be.

(Informal recess.)

The Court: I understand that the jurors prefer to come back here Monday morning.

[fol. 62] Mr. Levy: Yes, sir.

The Court: All right. I will excuse the jury, then, until Monday at half-past ten.

(Whereupon, the jury was excused until Monday, October 7, 1935, at 10:30 o'clock A. M.)

MOTION FOR DIRECTION OF VERDICT

Mr. Levy: Your Honor, I intended to move for the direction of a verdict in this case. I do not know whether I should make my motion until after your Honor has passed upon Mr. Asch's motion, or whether you care to reserve decision on that.

The Court: I would like to get your contentions on the law, and whatever authorities you have to cite. I should think if you are going to make a motion for the direction of a verdict it might be proper for you to make it now.

Mr. Levy: All right. The plaintiff moves for the direction of a verdict for the amount stated in the complaint, with interest.

The Court: All right. Are you ready and willing to discuss this now?

Mr. Levy: Yes, I think I would like to, if your Honor will hear us.

The Court: All right. I do not think the reporter need stay any longer. You may go Mr. Reporter.

(Whereupon, at 2:53 o'clock P. M. the reporter was excused.)

Adjourned to Monday, October 7, 1935, at 10:30 o'clock A. M.

[fol. 63] New York, October 7, 1935, 10:30 A. M.

(Note:—Counsel were not present.)

The Court: Gentlemen of the jury, there will not be any session of court today. After you had left on Friday, both sides moved for the direction of a verdict, and that takes the case out of the hands of the jury; so the case has been put over until tomorrow morning, Tuesday, at half-past ten; and you are excused.

Adjourned to Tuesday, October 8, 1935, at 10:30 o'clock A. M.

New York, October 8, 1935, 10:30 A. M.

ORDER GRANTING DEFENDANTS' MOTION FOR DIRECTED VERDICT

The Court: I have read most of these authorities which were submitted when we were here last week, and I am inclined to follow Judge Dore's decision. I shall, therefore, hold in this case, first, that the Harriman Bank was not enriched by reason of the sale of the bank's stock to Mr. Oppenheimer.

Second, that neither Mr. Harriman nor Mr. Williamson had any actual or apparent authority to make the representations to Mr. Oppenheimer in connection with the sale of the bank stock; and I think, therefore, that there can be no recovery in the present action, and I will grant the motion of the defendants to direct a verdict in their favor, with costs.

[fol. 64] The Clerk: Gentlemen of the jury, the Court directs you to return a verdict in favor of the defendants, and so say you all.

The Foreman of the Jury: Yes.

Mr. Levy: May the plaintiff have an exception to your Honor's ruling?

The Court: Yes.

MOTION TO SET ASIDE VERDICT

Mr. Levy: And may I make a motion to set aside the verdict on the ground that it is against the law and against the weight of evidence?

The Court: I will deny the motion, and give you an exception; and, of course, you will have the customary time.

Mr. Levy: Just one other motion, to complete the record: I omitted the other day at the conclusion of the case to move to strike out all the testimony with regard to the affiliate. I objected to its admission, and I move to strike it out.

The Court: With respect to what?

Mr. Levy: The transactions between the bank and the affiliate, on the grounds urged when it was introduced.

The Court: I will deny the motion, and give you an exception.

Mr. Levy: Yes.

[fol. 65] PLAINTIFF'S EXHIBIT 1

The Harriman National Bank & Trust Company

New York

Office of the President

October 28, 1930.

Mr. Henry E. Oppenheimer, Henry E. Oppenheimer & Co.,
580 Fifth Avenue, New York City.

DEAR MR. OPPENHEIMER:

I am asking our Mr. F. S. Williamson to visit you and bring to your attention a matter that, I am sure, will prove of mutual interest.

You are one of our oldest and most valued depositors; and while, in former conclusions of a plan such as is now in mind, our first-grade depositors were not considered, but was confined to stockholders, we have, in this instance, included them. I believe, although the proposed allotment is relatively small, the way will be paved in bringing about a profitable and cooperative result, and in a manner that will be mutually beneficial and profitable.

May I ask that, as this contemplated plan includes but a few of our depositors, it be treated in strict confidence?

Very truly yours (Sgd.) J. W. Harriman.

JWH:KVQ.

[fol. 66] PLAINTIFF'S EXHIBIT 2

Harriman National Bank & Trust Company,

Bond Department

527 Fifth Avenue

New York

Sold to Henry E. Oppenheimer

Confirmation
No. C 1800

10/31/30

Shares	Par value of Bonds	Description	Price	Amount	Commission	Interest or dividend	Total
10		Harriman Natl. Bk. & Tr. Co.	1512	15,120.00			15,120.00

KINDLY REMIT BY CHECK

Make checks payable to Harriman National Bank & Trust Company—Bond Department. If remittance is not made on date to which interest is figured, please add the additional Accrued interest which amounts to — per day, to date of payment.

[Stamped on Face:] Paid Nov. 1, 1930. Harriman Nat. Bk. & Tr. Co., Bond Department. Please Receipt and Return.

[fol. 67] PLAINTIFF'S EXHIBIT 3

No. 1245

New York Nov. 3rd 1930.

Henry E. Oppenheimer & Co.

580 Fifth Avenue

Bond Dept.

Pay to the order of Harriman National Bank & Trust Co. $15,120.00/100

Fifteen Thousand One Hundred Twenty Dollars . . Dollars

To The Harriman National Bank and Trust Company, of the City of New York. 1-235.

Henry E. Oppenheimer & Co.

[Perforation:] PAID 11 • 3 30 H N B

[fol. 68] PLAINTIFF'S EXHIBIT 4

The Harriman National Bank & Trust Company

Fifth Avenue and 44th Street

New York

Cable: Harribank. Open 8 A. M. to 8 P. M.

November 3rd, 1930.

Mr. Henry E. Oppenheimer, 580—5th Avenue, New York City.

DEAR SIR:

We acknowledge herewith receipt of your check in the amount of $15,120.00 covering the purchase of 10 shares Harriman National Bank & Trust Company capital stock, at 1512.

Assuring you of our desire to be of service to you at all times, we are

Yours very truly, (Sgd.) A. M. Austin, Vice-President.

[fol. 69] PLAINTIFF'S EXHIBIT 5

The Harriman National Bank & Trust Company
Fifth Avenue and 44th Street
New York

Cable: Harribank. Open 8 A. M. to 8 P. M.

Nov. 7th, 1930.

Mr. Henry E. Oppenheimer, 580—5th Ave., New York City.

DEAR SIR:

We are forwarding to you under separate cover by registered mail 10 shares Harriman National Bank & Trust Company capital stock certificate #4632 registered in your name.

Kindly acknowledge receipt on the copy of our letter enclosed with the security.

Yours very truly, (Sgd.) A. M. Austin, Vice President.

[fol. 70] PLAINTIFF'S EXHIBIT 6

(This is a stock certificate, #7555, for 8 shares of the capital stock of The Harriman National Bank & Trust Company of the City of New York, in the name of Henry E. Oppenheimer. The par value of a share is stated to be $100; capital stock $2,000,000. The certificate is dated October 20, 1932.

On the back of the certificate appears the following:)

"The registered holder of the share or shares of stock represented by the within certificate is entitled to a beneficial interest in an equivalent amount of shares represented by said certificate, in the capital stock (of no par value), of the Harriman Securities Corporation, a New York Corporation, under the terms of a certain agreement dated April 16, 1925, made between Joseph W. Harriman, John A. Noble and Bertram L. Kraus, Trustees, parties of the first part, and Howard W. Charles, Julius Lichtenstein and Abram L. Leeds, and other subscribers, as shareholders of The Harriman National Bank & Trust Company, parties of the second part, subject to all the agreements, terms and

conditions contained in the said agreement, which is hereby made a part of this endorsement, with the same force and effect as if it had been set forth in full, and which agreement is on file in the office of the Trustees, c/o The Harriman National Bank & Trust Company, 527 Fifth Avenue, New York City.

Joseph W. Harriman, John A. Noble, Bertram L. Kraus, Trustees.

[fol. 71] For Value Received — hereby sell, assign and transfer unto —— ——, — Shares of the Capital Stock of The Harriman National Bank & Trust Company of the City of New York and the beneficial interest in the Harriman Securities Corporation coupled therewith, and do hereby irrevocably constitute and appoint —— ——, Attorney to transfer such shares of stock and beneficial interest on the books of the Transfer Agent and Trustees, with full power of substitution in the premises.

Dated —— —, 19—.

—— ——.

In Presence of —— ——."

[On Side:] "Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement or any change whatever."

[fol. 72] PLAINTIFF'S EXHIBIT 7

May 6, 1933.

Harriman National Bank and Trust Company, 557 Fifth Avenue, New York City.

Henry E. Cooper, Esq., Conservator, Harriman National Bank and Trust Company, 557 Fifth Avenue, New York City.

The Controller of the Currency, Washington, D. C.

GENTLEMEN:

On or about November 1, 1930, I was induced by fraud and false representations to purchase from the Harriman National Bank and Trust Company ten shares of its capital stock, and gave my check, and my deposit account in the said bank was debited therefor, in the sum of $15,120.00. I

received stock certificate #4632 for ten shares registered in my name. Before I became aware of the true facts, I received dividends amounting to $525.00, and sold two of said shares for the sum of $2408.00, and received stock certificate #7555 for the remaining eight shares of said stock.

I herewith serve notice that said alleged purchase was induced by fraud and false representations and that I rescind the same. I tender herewith said stock certificate #7555 for eight shares of Harriman National Bank & Trust [fol. 73] Company capital stock and I demand immediate payment of the sum of $12,187.00 with interest from November 1, 1930. If you are not in a position to make immediate payment of said sum because of the present status of the bank, then I demand that my deposit account be credited with the said sum of $12,187.00 with interest from November 1, 1930, and that you deliver to me a written statement to that effect.

Yours very truly, —— ——.

[fol. 74] PLAINTIFF'S EXHIBIT 8 WITH EXHIBITS ANNEXED THERETO

(Same Title)

It is hereby stipulated and agreed, by and between the attorneys for the plaintiff and the attorneys for the defendant The Harriman National Bank & Trust Company of the City of New York, subject only to objections as to materiality and relevance, and for the purpose of this trial only, as follows:

1. Margaret Singleton, who testified in the case of Margaret Singleton v. Joseph W. Harriman and the Harriman National Bank & Trust Company of the City of New York, and whose testimony is printed in the record on appeal in that case at folios 221-278, 548-551, 690-696, and Plaintiff's Exhibits 1, 2, 3A, 3B, 4 and 5, would, if called as a witness on the trial of this action, give the same testimony as she gave in that action.

(A digest of Singleton's testimony follows:)

Margaret Singleton of 305 West End Avenue, New York City, would testify that during the month of November, 1930, she was a depositor with The Harriman National

Bank and Trust Company of the City of New York, having a deposit account therein subject to check. On November 24, 1930, she had a conversation with Francis S. Williamson, a Vice-President of the Bank, at his request. Williamson presented her with a letter addressed to her dated November 22, 1930, being Plaintiff's Exhibit 8-A. At this [fol. 75] interview, Williamson said that the Bank stock was quoted at 1500 bid; that the Bank "had some of its shares that it wished to offer to its depositors" which it had acquired from an estate. Mrs. Singleton purchased two shares at $1512 each, and received confirmation slip being, Plaintiff's Exhibit 8-B. Her account with the Bank was debited to the extent of the purchase price, Plaintiff's Exhibits 8-C and 8-D. She received a letter dated November 25, 1930, being plaintiff's Exhibit 8-E.

PLAINTIFF'S EXHIBIT 8-A

(This is similar to Plaintiff's Exhibit 1, except for date, name and address of addressee.)

PLAINTIFF'S EXHIBIT 8-B

(This is similar to Plaintiff's Exhibit 2, except that in place of "Kindly Remit by Check", there appears "CHG. A/C". The stamps "Paid", etc., and "Please Receipt", etc., do not appear.)

[fol. 76] PLAINTIFF'S EXHIBIT 8-C

Harriman National Bank & Trust Company

Bond Department, New York

No. C 1911.

Debit
Depositor's Account

Margaret Singleton

Hotel Esplanade, 305 West End Ave., N. Y. C.

11/24/30.

N. B.—Duplicate in envelope with Monthly Bk. Statement of Nov. 1930.

	Price	Amount	Total
2 Shares Harriman Natl. Bk. & Tr. Co.	1512	3,024.00	3,024.00

CHG. A/C

Purchase of Securities.

[Perforated:] Paid 11 25 30 H N B

[fol. 77] PLAINTIFF'S EXHIBIT 8-D

The Harriman National Bank & Trust Co. of the City of New York

In Account with Mrs. Margaret Singleton, Hotel Esplanade, 305 West End Ave., New York, N. Y.

Statement for Month of November 1930

This Account as Rendered Will be Considered Correct Unless We Are Notified of Error, Within Ten Days.

Date	Debits	Date	Debits	Date	Debits	Date	Credits
1 6	60.00—				Balance	Nov. 1	6,224.67
2 12	60.00—					1	150.00
3 12	175.00—					3	537.50
4 19	100.00—					15	150.00
5 25	3,024.00—	Har.	Bk. Stk.				12
						Balance	3,643.17

[fol. 78] PLAINTIFF'S EXHIBIT 8-E

The Harriman National Bank & Trust Company

New York

Office of the President

DEAR MRS. SINGLETON: November 25, 1930.

I feel greatly complimented upon your prompt acceptance of my invitation, presented to you by Mr. Williamson. I feel certain that you will not regret the investment and only wish I could have offered you more, but that is quite impossible.

I want you to, at my request, put this certificate in the bottom of your box and forget it. I am sure you will find the results gratifying.

Very sincerely, J. W. Harriman.

Mrs. Margaret Singleton, Hotel Esplanade, 305 West End Avenue, New York City.

2. Reuben P. Sleicher of 45 West 45th Street, Manhattan, New York City, being sworn as a witness for plaintiff on this trial, would testify that during the month of November, 1930, he was a depositor with The Harriman National Bank & Trust Company of the City of New York, having a deposit account subject to check. On November 22, 1930, Francis S. Williamson, a Vice-president of the Bank, called [fol. 79] on him with a letter addressed to him, dated November 22, 1930, signed "J. W. Harriman," as follows:

"The Harriman National Bank & Trust Company

New York

Office of the President

November 22, 1930.

Mr. Reuben P. Sleicher, % Martin & Murray, 45 West 45th Street, New York, N. Y.

DEAR MR. SLEICHER:

I am asking our Mr. F. S. Williamson to visit you and bring to your attention a matter that, I am sure, will prove of mutual interest.

You are one of our most valued depositors; and while, in former conclusions of a plan such as is now in mind, our first grade depositors were not considered, but was confined to stockholders, we have, in this instance, included them. I believe, although the proposed allotment is relatively small, the way will be paved in bringing about a profitable and cooperative result, and in a manner that will be mutually beneficial and profitable.

May I ask that, as this contemplated plan includes but a few of our depositors, it be treated in strict confidence?

Very truly yours, J. W. Harriman (Signed)"

JWH:HL

[fol. 80] He bought one share of the Bank stock on November 26, 1930 at $151 2., which was charged to his account. On December 8, 1930, he received a letter addressed to him signed "J. W. Harriman," as follows:

"The Harriman National Bank & Trust Company

New York

Office of the President

December 8, 1930.

Dear Mr. Sleicher:

I feel greatly complimented upon your prompt acceptance of my invitation, presented to you by Mr. Williamson. I feel certain that you will not regret the investment, and only wish I could have offered you more, but that it quite impossible.

I want you to, at my request, put this certificate in the bottom of your box and forget it. I am sure the results will be gratifying.

Very truly yours, J. W. Harriman (Signed)

Mr. Reuben P. Sleicher, % Martin & Murray, 45 West 45th Street, New York City."

3. Elmer P. Merkle of 76 Carlyle Avenue, Yonkers, New York, who testified in the Singleton case and whose testimony is printed in the record on appeal in that case at [fol. 81] folios 409-422, and Plaintiff's Exhibit 13, would if called as a witness in the trial of this action, give the same testimony as he gave in that action.

(A digest of Merkle's testimony follows):

Elmer P. Merkle would testify that during the month of October, 1930, he was a member of the firm of Merkle & Elberth, architects, depositors with The Harriman National Bank and Trust Company of the City of New York, having a deposit account therein subject to check. On October 22, 1930, Francis S. Williamson, a Vice-President of the Bank, called upon him with a letter addressed to him dated October 22, 1930, being Plaintiff's Exhibit 8-F. At this interview, Williamson said the Bank was "liquidating an estate of 20 shares of [Bank] stock," which he was quoting to

him at $1512. per share. Merkle bought five shares of Bank stock at $1512 each, paying for the same with his check drawn to the order of The Harriman National Bank and Trust Company of the City of New York. He received confirmation slip, being Plaintiff's Exhibit 8-G.

[fol. 82] PLAINTIFF'S EXHIBIT 8-F

(This is similar to Plaintiff's Exhibit 1, except for date and name and address of addressee.)

PLAINTIFF'S EXHIBIT 8-G

(This is similar to Plaintiff's Exhibit 2, except that the stamps "Paid," etc., and "Please Receipt," etc., do not appear.)

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4. William J. Elberth of 8907 34th Avenue, Jackson Heights, Long Island, who testified in the Singleton case, and whose testimony is printed in the record on appeal in that case at folios 423-427 and Plaintiff's Exhibits 14, 15 and 16, would, if called as a witness in the trial of this action, give the same testimony as he gave in that action.

(A digest of Elberth's testimony follows:)

William J. Elberth would testify that upon receiving a letter similar to that received by his partner Merkle, he purchased five shares of Bank stock at $1512 per share, paying for the same with his check drawn to the order of The Harriman National Bank and Trust Company of the City of New York. He received confirmation slip, being Plaintiff's Exhibit 8-H, and letter dated November 6, 1930, being Plaintiff's Exhibit 8-I.

PLAINTIFF'S EXHIBIT 8-H

(This is similar to Plaintiff's Exhibit 2. The following stamp appears thereon:

"Paid check #0516
Bank of Man. Trust Co.
W Y E 10/31/30.")

[fol. 83] PLAINTIFF'S EXHIBIT 8-I

(This is similar to Plaintiff's Exhibit 5, except for date and name and address of addressee.)

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5. Henry E. McDewell of 17 West 44th Street, Manhattan, New York City, being sworn as a witness for plaintiff on this trial, would testify that during the months of January and February, 1931, Hattie Soule McDewell and Henry E. McDewell were depositors with The Harriman National Bank & Trust Company having a joint deposit account subject to check. On February 2, 1931, Francis S. Williamson, a vice-president of The Harriman National Bank & Trust Company, called at his office with a letter addressed to him, dated January 30, 1931, signed "J. W. Harriman", as follows:

"The Harriman National Bank & Trust Company, New York

Office of the President

January 30, 1931.

Mr. Henry E. McDewell, 17 West 44th Street, New York, N. Y.

DEAR MR. MCDEWELL:

I am asking our Mr. F. S. Williamson to call upon you regarding a matter that may prove to be of interest to you inasmuch as you are a good depositor in this institution.

Commending Mr. Williamson to your consideration, I remain

Very truly yours, J. W. Harriman (Signed)."

JWH:ML.

[fol. 84] Both Hattie Soule McDewell and Henry E. McDewell were present at the interview with Francis S. Williamson which then occurred. Mr. Williamson said that an option on five shares of the Harriman National Bank & Trust Company stock was being offered to five or six depositors in the Bank and that Mr. McDewell was allotted one share at $1515., and that the market price of the stock was $1550. bid; Mr. McDewell bought one share at $1515. and received a confirmation of sale, Plaintiff's Exhibit 8-J.

Mrs. Hattie Soule McDewell bought two shares at the same time and received a confirmation of sale annexed hereto, Plaintiff's Exhibit 8-K. The purchase price was charged to their joint account and they received charge slips, Plaintiff's Exhibits 8-L and 8-M.

PLAINTIFF'S EXHIBIT 8-J

(This is similar to Plaintiff's Exhibit 2, except that there appears:

"CHG. A/C—Hattie
Soule & Henry E.
McDewell Joint A/C")

PLAINTIFF'S EXHIBIT 8-K

(This is similar to Plaintiff's Exhibit 8-J.)

[fol. 85] PLAINTIFF'S EXHIBIT 8-L

(This is similar to Plaintiff's Exhibit 8-C.)

PLAINTIFF'S EXHIBIT 8-M

(This is similar to Plaintiff's Exhibit 8-C.)

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6. William H. Boon of El Reno, Oklahoma, being sworn as a witness for plaintiff on this trial would testify that in May, 1931, he received a letter addressed to him dated May 18, 1931, signed "J. W. Harriman", as follows:

"The Harriman National Bank & Trust Company, New York

Office of the President

May 18, 1931.

Personal

Mr. W. H. Boon, Secretary, Canadian Hill & Elevator Co., El Reno, Oklahoma.

DEAR MR. BOON:

Your interest in the weekly advertising reprints of The Harriman National Bank and Trust Company leads me to

believe that you are acquainted with the business and banking policy of this institution. We have recently acquired a few shares of our stock from an estate, and it occurs to me to offer you an opportunity to purchase one share—[fol. 86] all I can offer at the present time. My idea is, of course, to extend the influence and associations of the Bank.

This stock cost $1515 per share and you may have one share at the same price, although the market is, and has been for some time past $1500 bid—$1600 asked. Each share of the Bank stock carries with it one share of the Harriman Securities Company stock. Combined dividends for a number of years have been $35. a share.

Three years ago we increased our capital, stockholders receiving the right to subscribe for one share for every two held at $310 a share. We continued to pay the same dividends on the increased capitalization; that is $35. per share. Last year we again increased our capital, distributing a stock dividend of one share for every three held, as a bonus. On this increased capitalization, we have likewise continued to pay the same dividend—$35. a share per year. You can readily see that we have always treated our stockholders very handsomely. The average annual return on an investment made in our stock, including stock dividends and market appreciation, since 1920, has been 50%. There is, by the way, one item in particular—the Banking House at Fifth Avenue and 44th Street—that has significant interest for shareholders.

I do not want you to consider this offer unless you are inclined to make a seasoned investment, for it is for investment we desire to have our stock held, not purchased for the mere purpose of selling on any material rise.

This stock is closely owned, and I desire it to be continued so. Should you take advantage of this offer, I hope you will place this Certificate in the bottom of your box [fol. 87] and forget it. I feel sure that the results will be gratifying.

I would appreciate hearing from you at an early date, as the stock now carries the full semi-annual dividend payable in July.

Yours very truly, J. W. Harriman.

JWH:KVQ.
Enclosure.

He purchased one share of the stock of The Harriman National Bank & Trust Company on or about June 16, 1931 and paid for it with check, Plaintiff's Exhibit 8-N.

[fol. 88] PLAINTIFF'S EXHIBIT 8-N

(This is a check of Canadian Mill & Elevator Co., El Reno, Oklahoma, signed by said company by W. H. Boon and John E. Gallagher, drawn on the Chase National Bank of New York to the order of W. H. Boon. On the back of the check appears the following:

"Pay to the order of: The Harriman National Bank & Trust Company.

[Signed] W. H. Boon."

On the back also appears a stamp: "Received payment through New York Clearing House prior endorsements guaranteed. Jun. 20, 1931. The Harriman National Bank and Trust Co. of the City of New York.")

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7. Norman F. D'Evelyn of 405 Montgomery Street, San Francisco, California, being sworn as a witness for plaintiff on this trial, would testify that in June 1931, he received a letter addressed to him dated June 9, 1931, as follows:

[fol. 89] "The Harriman National Bank & Trust Company, New York

June 9, 1931.

Office of the President

Personal

Norman P. D'Evelyn, Esq., Balfour Building, San Francisco, California.

DEAR MR. D'EVELYN:

Your interest in the weekly advertising reprints of the Harriman National Bank and Trust Company leads me to believe that you are acquainted with the business and banking policy of this institution. We have recently acquired a few shares of our stock from an estate, and it occurs to me to offer you an opportunity to purchase one share—all

I can offer at the present time. My idea is, of course, to extend the influence and associations of the Bank.

This stock cost $1515 per share and you may have one share at the same price, although the market is, and for some time past has been, $1500 bid—$1600 asked. Each share of the Bank stock carries with it one share of the Harriman Securities Company stock. Combined dividends for a number of years have been $35. a share.

Three years ago we increased our capital, stockholders receiving the right to subscribe for one share for every two held at $310 a share. We continued to pay the same divi- [fol. 90] dends on the increased capitalization; that is, $35 per share. Last year we again increased our capital; distributing a stock dividend of one share for every three held, as a bonus. On this increased capitalization we have likewise continued to pay the same dividend—$35 a share per year. You can readily see that we have always treated our stockholders very handsomely. The average annual return on an investment made in our stock including stock dividends and market appreciation since 1920 has been 50%. There is, by the way, one item in particular—the Banking House at Fifth Avenue and 44th Street—that has significant interest for shareholders.

I do not want you to consider this offer unless you are inclined to make a seasoned investment, for it is for investment we desire to have our stock held, not purchased for the mere purpose of selling on any material rise.

This stock is closely owned, and I desire it to be continued so. Should you take advantage of this offer, I hope you will place this Certificate in the bottom of your box and forget it. I feel sure that the results will be gratifying.

I would appreciate hearing from you at an early date as the stock now carries the full semi-annual dividend payable in July.

Yours very truly, J. W. Harriman, (Signed)".

JWH:ML
Encl.

Mr. D'Evelyn bought one share of the stock of The Harriman National Bank & Trust Company on or about July 11, 1931, and paid for it with check, Plaintiff's Exhibit 8-O.

[fol. 91] PLAINTIFF'S EXHIBIT 8-O

(This is check of Norman P. D'Evelyn, drawn on the Bank of California to the order of The Harriman National Bank & Trust Company.

On the back appears the following stamp: "Pay Any Bank, Banker or Trust Co. Prior endorsements guaranteed. Jul. 16, 1931. The Harriman Nat'l Bank & Trust Co. of the City of New York. J. L. Turner, Cashier.")

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8. Louis A. Jaskow of 8 Antler Place, New Rochelle, who testified in the case of Louis A. Jaskow v. The Harriman National Bank and Trust Company of the City of New York, and whose testimony in that case appears at pages 2-27 of the stenographer's minutes, would, if called as a witness in the trial of this action, give the same testimony as he gave in that action.

(A digest of Jaskow's testimony follows:)

Louis A. Jaskow would testify that during the months of June and July, 1931, he was a depositor with The Harriman National Bank and Trust Company of the City of New York, having a deposit account therein subject to check. In June, 1930, he received by mail a letter substantially identical with Plaintiff's Exhibit 1. Thereafter he called at the Bank and had a conversation with one Noble, a Vice-[fol. 92] President. Noble said the Bank stock was quoted at 1500 bid and 1600 asked. Thereupon Jaskow bought 2 shares of the Bank stock at $1515 each, the purchase price being charged to his account July 2, 1931. He received a confirmation slip similar to Plaintiff's Exhibit 2.

9. Marinus Roefs of 18607 Jordan Avenue, St. Albans, Long Island, who testified in the Singleton and Jaskow cases, and whose testimony is printed in the record on appeal in the Singleton case at folios 364-373 and appears in the Jaskow case at pages 41-52 of the stenographer's minutes, would, if called as a witness on the trial of this action, give the same testimony as he gave in those actions.

(A digest of Roefs' testimony follows:)

Marinus Roefs would testify that during the years 1930, 1931 and 1932 he was a trader with Clinton, Gilbert (or

Clinton Gilbert & Company, successor), dealers and specialists in bank stocks. He had charge of furnishing quotations to the Bank Stock Dealers Association and the Unlisted Security Dealers Association. During the period November 1930, to March 1932, the final bid for Harriman Bank stock which he furnished daily to the said Associations usually came from the Harriman Bank through Austin, an officer of the Bank, at about 4 o'clock in the afternoon of the business day. Each such bid furnished the Associations represented a sale to the Bank and the quotation was the price at which the stock was sold to the Bank. There were very few sales to persons other than the Bank. On cross examination, Roefs would testify that [fol. 93] when he speaks of a sale to the Bank, he means that the dealings of Clinton, Gilbert were with the Bank solely; that confirmations for sales were sent to the Bank, attention of Mr. Austin; but he does not know whether the sale was to the Bank or through the Bank.

10. Frank J. O'Reilly of 19 Coles Avenue, Amityville, Long Island, being sworn as a witness for plaintiff on this trial, would testify that during 1929, 1930 and 1931, he was associated with Gilbert Elliott & Company, specialists in bank stocks. During this period, whenever the Harriman National Bank & Trust Company stock was offered for sale through Gilbert Elliott & Company, he would inquire of Mr. Austin, a vice-president of the said Bank, whether the Bank would make a bid for the stock. Except on very rare occasions no offer was made for such stock except by the Bank. The following sales of bank stocks were made by Gilbert Elliott & Company from January 1930 to November 1931:—647 shares of Harriman National Bank & Trust Company stock sold to the Bank in 139 trades; during the same period, 25 shares in 8 trades sold to parties other than the Bank. Gilbert Elliott & Company furnished quotations to the Unlisted Security Dealers Association during the period 1929 to 1931. The bids furnished such Association were generally based on bids made by Mr. Austin for the Bank.

The said Frank J. O'Reilly would testify on cross-examination that when he refers to bids or offers by, or sales to, the Bank, he does not know whether the bids, offers or sales were made by or to the Bank as principal or as agent for a customer.

[fol. 94] 11. Raymond Boylan of 499 West 129th Street, New York City, being sworn as a witness for plaintiff on this trial, would testify that during 1921 he was associated with Grannis Doty & Company or Doty Fay & Company (a successor company), dealers in bank stocks. During the period January 12, 1931 to July 3, 1931, Doty Fay & Company made the following sales of Harriman National Bank & Trust Company stock:—137 shares of Harriman National Bank & Trust Company stock sold; the purchaser of 132 of these shares being Harriman Bank.

During the period October 1, 1930 to January 12, 1931, Doty Fay & Company had the following transactions in Harriman National Bank & Trust Company stock:

[fol. 95]

Date		Shares	Bought from	Price	Date		Shares	Sold to	Price
	1930								
Oct.	1	4	Greenhall Co.	$1500	Oct.	1	4	Harriman Nat. Bank	$1515
	9	15	Kearn & Wm.	1485		9	15	" " "	1495
	24	10	A. Lewishon Co.	1475		24	5	" " "	1500
						25	5	" " "	1500
	27	1	Greenhall Co.	1490		27	1	Kearn	1500
		3	"	1490			3	Gilbert Eliott Co.	1500
		5	Sydeman Bros.	1490			5	" "	1500
Nov.	3	5	Greenhall Co.	1490	Nov.	3	5	Harriman Nat. Bank	1500
	10	10	Rudolph Bukner	1450		10	10	" " "	1490
	11	5	Hanson Hanson	1475		12	5	" " "	1490
	12	5	Noble & Corwin	1475		13	5	" " "	1490
		5	" "	1475			5	" " "	1485
		5	" "	1475			5	" " "	1500
	13	5	" "	1480			5	" " "	1490
	14	10	A. Lewishon Co.	1490		14	10	" " "	1500
	20	10	P. F. Bonnett	1500		20	10	" " "	1505
Dec.	15	8	Englander	1497½	Dec.	15	8	" " "	1500
	16	5	Palmer Co.	1505		16	5	Gilbert E. Co.	1510
	18	6	Harriman Nat. Bk (to trade of 12/17/30)	1510		17	6	Harriman Nat. Bank	1510
						18	6	" " "	1505
	19	26	U. S. Trust Co.	1480		19	5	" " "	1500
						20	5	" " "	1500
						22	5	" " "	1500
						24	5	" " "	1515
	1931					1931			
Jan.	12	4	Irving Tr.	1500	Jan.	12	4		

[fol. 96] The said Raymond Boylan would testify on cross-examination that when he refers to the Bank as purchaser, or when the records of Doty Fay & Company, as above set forth, refer to the Bank as purchaser, he does not know whether the Bank acted as principal or as agent for a customer.

12. That John E. Windhorst of 74 Trinity Place, New York City, who testified in the Jaskow case, and whose testimony appears in the stenographer's minutes in that case at pages 80-83, would if sworn as a witness on the trial of this action, give the same testimony as he gave in that case.

(A digest of Windhorst's testimony follows:)

John E. Windhorst would testify that during 1931 and 1932 he was a trader with Hoit, Rose & Troster, dealers in bank stocks. That from January 1, 1931, to July 2, 1931, Hoit, Rose & Troster had the following transactions in Harriman Bank stock: Bought and sold 83 shares in 41 deals. The purchaser in all of these deals was the Harriman Bank. The checks for the purchases were checks of the Harriman Bank and the memoranda of sale were to the Bank. Windhorst would testify on cross examination that he assumed the bank was acting as agent in these transactions.

13. James Aspell of 2 Gramercy Park, New York City, [fol. 97] who testified in the Jaskow case, and whose testimony appears in the stenographer's minutes in that case at pages 69-79, would if called as a witness in the trial of this action give the same testimony as he gave in that case.

(A digest of Aspell's testimony follows:)

James Aspell would testify that he is the treasurer of Aspell & Co., Inc., the successors of Greenhall & Company. That from January 1, 1931, to July 2, 1931, Greenhall & Company, dealers in unlisted securities including bank stocks, had the following transactions in Harriman National Bank & Trust Company stock:

[Feb. 98]

Date	Shares	Bought from	Price	Date	Shares	Sold to	Price
1931				1931			
Jan. 13	3	Harriman Bank	$1510	Jan. 13	3	Cora Goldstein	$1535
26	2	" "	1495	26	2	Edgar B. Lee	1560
Mar. 5	2	Edgar B. Lee	1500	Mar. 5	2	Harriman Bank	1500
Apr. 14	1	Irene R. Weisbein	1500	Apr. 14	3	" "	1500
	2	C. Greenfield	1500				
30	3	Pansy Ranch	1495	30	3	" "	1500
May 4	3	Cora Goldstein	1495	May 4	3	" "	1500
14	2	C. Albert Eckhart	1500	14	7	" "	1500
	5	Mrs. B. McKeever	1500				
21	1	E. S. Silverman	1490	21	1	" "	1500
26	2	James Aspell	1500	*26	2	" "	1500
28	1	Herman Robinson	1490	†28	1	" "	1500
June 2	2	James Aspell	1499.50	June ‡1	2	" "	1500
11	1	H. S. Canbee	1495	June 11	2	" "	1500
	1	M. S. Canbee	1495				
15	2	Buell McKeever	1500	June 15	2	" "	1500

* As of 27th.
† As of 29th.
‡ As of 2nd.

[fol. 99] On cross examination Aspell would testify that when the above table states "sold to" Harriman Bank, it does not appear whether Harriman Bank was acting as principal or agent.

13A. During the period October 1, 1930 to January 13, 1931, Greenhall & Company (predecessors of Aspell & Company) had the following transactions in Harriman National Bank & Trust Company stock:

[fol. 100]

Date 1930	Shares	Bought from	Price
Oct. 1st	10	Lillia B. Hyde	$1495
" 2nd	5	" "	1495
" 6th	10	" "	1492
" 10th	4	A. Ralph Steinberg	1475
" 15th	5	Sampson H. Schwarz	1475
" 16th	5	Cora Goldstein	1465
" 21st	5	James Aspell	1475
" 23rd	5	Sampson H. Schwarz	1460
" 27th	4	" "	1475
" 27th	5	George Ainsworth	1465
" 29th	5	Mrs. Irma Lindheim	1475
Nov. 3rd	10	Sampson H. Schwarz	1471
" 6th	4	Mathias Niewenhouse	1490
" 8th	2	Seligsberg & Co	1447
" 11th	5	National City Bank, 42nd St	1470
" 12th	1/3	Eglee Inv. Corp	1470
" 12th	6 2/3	William F. Zentler	1470
" 12th	1	Anna E. Gordon	1465
" 26th	1	Mrs. Theresa Breiter	1500
Dec. 1st	1	" " "	1500
" 13th	1	Pansy G. Rasch	1500
" 17th	1	Pansy G. Rasch	1500

Date 1930	Shares	Sold to	Price
Oct. 1st	6	Hoit Rose & Troster	$1500
" 1st	4	Grannis Doty & Co.	1500
" 2nd	5	Harriman Bank	1500
" 6th	10	" "	1496
" 10th	4	" "	1485
" 15th	5	" "	1485
" 16th	5	" "	1475
" 21st	5	" "	1480
" 23rd	5	" "	1470
" 27th	4	Grannis Doty & Co.	1490
" 27th	5	Harriman Bank	1475
" 29th	5	Harriman Bank	1490
Nov. 3rd	5	Harriman Bank	1485
" 3rd	5	Grannis Doty Co.	1490
" 6th	4	Harriman Bank	1500
" 8th	2	Harriman Bank	1500
" 11th	5	Hoit Rose & Troster	1480
" 12th	8	Harriman Bank	1480
" 26th	1	Palmer & Co.	1515
Dec. 1st	1	Harriman Bank	1505
" 13th	1	" "	1510
" 17th	1	" "	1510

[fol. 101] When the records of Greenhall & Company, as above set forth, refer to shares "sold to" the Bank, it does not appear whether the Bank acted in the transaction as principal or as agent for a customer.

14. Henry T. Gallaher of Amityville, Long Island, being sworn as a witness for plaintiff on such trial, would testify that in November and December 1930, he was associated with the firm of Gilbert Elliott & Company, dealers in bank stock, as partner in charge of bank stock trading; that during 1930, he furnished quotations of The Harriman National Bank & Trust Company stock to the Bank Stock Dealers Association, based on prevailing supply and demand as he saw it in his office; that from March 8th to September 23rd, 1932, his firm had the following dealings in Harriman National Bank & Trust Company stock:

"March 8th, purchase of one share from Grannis, McMurdy, at $1,345;

Same day, sold one share to Harriman National Bank at $1350;

March 9th, purchased one share from Grannis, McMurdy at $1335;

March 9th, sold one share to the Harriman National Bank, at $1340;

March 10th, purchased one share from Grannis, McMurdy, $1335;

Same date, sold one share to Harriman National Bank, at $1340;

April 21st, purchased one share from Robert Morris & Co., at $1315;

Same date, sold one share to Harriman National Bank, at $1320;

[fol. 102] April 22nd, purchased one share from Robert Morris & Co., at $1320;

Same date, sold one share to the Harriman National Bank, at $1320;

April 23rd, purchased one share from Robert Morris & Co., at $1315;

Same date, sold one share to the Harriman National Bank, at $1320;

April 25th, purchased one share from Robert Morris & Co., at $1315;

Same date, sold one share to Harriman National Bank, at $1320;

April 26th, purchased one share from Robert Morris & Co., at $1315;

Same date, sold one share to Harriman National Bank, at $1320;

April 27th, purchased one share from Robert Morris & Co., at $1315;

Same date, sold one share to Harriman National Bank, at $1320;

April 28th, purchased one share from Robert Morris & Co., at $1315;

Same date, sold one share to Harriman National Bank, at $1320;

April 29th, purchased one share from Robert Morris & Co., at $1315;

Same date, sold one share to Harriman National Bank, at $1320;

May 2nd, purchased one share from Robert Morris & Co., at $1315;

Same date, sold one share to Harriman National Bank, at $1320;

May 3rd, purchased one share from Robert Morris & Co., at $1315;

Same date, sold one share to Harriman National Bank, at $1320;

May 4th, purchased one share from Robert Morris & [fol. 103] Co., at $1295;

Same date, sold one share to Harriman National Bank, at $1300;

May 5th, purchased one share from Robert Morris & Co., at $1295;

Same date, sold one share to Harriman National Bank at $1300;

May 6th, purchased one share from Robert Morris & Co., at $1295;

Same date, sold one share to Harriman National Bank at $1300;

May 10th, purchased one share from Robert Morris & Co., at $1295;

Same date, sold one share to the Harriman National Bank, at $1300;

May 11th, purchased one share from Robert Morris & Co., at $1245;

Same date, sold one share to Harriman National Bank at $1250;

May 12th, purchased one share from Robert Morris & Co., at $1245;

Same date, sold one share to Harriman National Bank at $1250;

May 13th, purchased one share from Robert Morris & Co., at $1245;

Same date, sold one share to Harriman National Bank at $1250;

May 17th, purchased one share from Robert Morris & Co., at $1220;

Same date, sold one share to Harriman National Bank at $1225;

May 18th, purchased one share from Robert Morris & Co., at $1220;

Same date, sold one share to Harriman National Bank at $1225;

May 19th, purchased one share from Robert Morris & [fol. 104] Co., at $1185;

Sold one share to Harriman National Bank at $1190;

May 27th, sold one share to Benjamin D. Taetel for $300;

May 28th, bought one share of Hoit, Rose & Troster, at $265;

July 8th, bought five shares of Potter & Co., at 188½ per share;

Same date, sold five shares to Robert Morris, at $200 a share;

July 19th, bought five shares from Hoit, Rose & Troster, at $175 a share;

Same date, sold five shares to Robert Morris, at $185 a share;

July 25th, bought ten shares of Hoit, Rose & Troster, at $150 a share;

Same date, sold ten shares to Robert Morris & Co., at $160 a share;

July 28th, bought five shares from Joseph Egberg, at $140 a share;

Same date, sold five shares to Benjamin D. Traetel, at $150 a share;

September 9th, bought thirty shares of Hoit, Rose, at $107 a share;

Same date, sold thirty shares to Ash & Company, at $110 a share;

September 23rd, bought two shares of Hoit, Rose, at $90 a share;

September 23rd, sold two shares to Ash & Company, at $93."

January 16, 1933; Gilbert Elliott & Company bought five shares from Katz Bros. at $45 per share, and sold them on the same day to Ulrich & Company at $50 per share.
[fol. 105] The said Henry T. Gallaher would testify on cross examination that when he refers to sales to the Bank he does not know whether the bank was acting as principal or as agent for a customer.

15. Frank A. Schmitt of 1370 Merry Avenue, Bronx, New York City, being sworn as a witness for plaintiff on this trial, would testify that during the period beginning January 1, 1930 he has been Chief Financial Statistician for the New York Herald-Tribune. The Herald-Tribune published bid and asked prices for The Harriman National Bank & Trust Company stock under the heading "Over-the-Counter Security Market Quotations," receiving these bid and asked prices from the Unlisted Security Dealers Association of New York on lists headed "Association of Bank Stock Dealers" until about March, 1932. The paper discontinued publishing bid and asked prices of the Harriman National Bank & Trust Company stock in the latter part of May, 1932.

16. Joseph S. Donlon of Belleville, New Jersey, being sworn as a witness for plaintiff on this trial, would testify that during the period beginning January 1, 1930 he supervised the over-the-counter market quotations appearing in the New York Times. During this period the New York Times published quotations of The Harriman National Bank & Trust Company stock under the heading "Banks and Trust Companies," securing these quotations from the Unlisted Security Dealers Association and the Association of Bank Stock Dealers. On March 17, 1932, these associations stopped furnishing quotations. The New York Times, [fol. 106] however, continued to publish quotations until May 30, 1932.

17. Peter Ross of No. 721 Walton Avenue, Bronx, New York City, who testified in the Singleton case and whose testimony is printed in the record on appeal in that case, at folios 346-363, would, if called as a witness on the trial of this action, give the same testimony as he gave in that case.

(A digest of Ross' testimony follows:)

Peter Ross would testify that in November, 1930 he was chief manager of the quotation bureau of the bank stock department of the Unlisted Security Dealers' Association of New York (affiliated with the Association of Bank Stock Dealers). During this period he, or behalf of the Association, furnished quotations on bank stocks, including Harriman Bank stock, to newspapers, including the New York Times, Herald-Tribune, Wall Street Journal, Journal of Commerce, Evening Post, Evening Sun, Evening World, Associated Press and United Press. He secured the quotations which he furnished the newspapers from Clinton, Gilbert & Co., Hoyt, Rose & Troster and Gilbert Eliot & Co. The Association continued to furnish quotations to the papers until March 18, 1932.

18. Raymond W. Kelly of 3430—92nd Street, Jackson Heights, Long Island, New York, being sworn as a witness for the plaintiff on this trial, would testify that he never had any personal interest in any of the certificates for shares of the stock of The Harriman National Bank & Trust [fol. 107] Company standing in his name in November, 1930, and throughout 1930 and 1931.

That on cross examination he would testify that he held such shares of stock as nominee for the Harriman Securities Corporation; that he was employed during the whole period by the Harriman Investors Fund, Inc.; that when the certificates came in for transfer into his name he endorsed them and examined them, but did not examine the assignments or powers of attorney for transfer to him.

19. That plaintiff's Exhibit No. 6 in the Singleton case, is a true and correct copy of the stock transfer sheets of the Harriman National Bank & Trust Company for the month of November, 1930.

(The stock transfer sheets, which are omitted from printing, show the following under date November 6, 1930:

Closed a/c	Surrendered Name	Certificate No.	Shares	Issued Name	Certificate No.	Shares	New a/c
D982							
	Raymond Kelly	4599	3	—Henry E. Oppenheimer—	4632	10	
	Raymond Kelly	4527	5	—Ten—			
	Raymond Kelly	4528	5	—580 Fifth Avenue New York, N. Y.			
				1			
	Raymond Kelly	4587	25	—Edward R. West—	4633	10	
				—Ten— c/o E. R. West Coffee Co. 180 West Street New York, N. Y.			
				2			
				—Mrs. Benveneda Davis—	4634	5	
				—Five— c/o Richard Davis Co. 12 East 41st Street New York, N. Y.			
				3			
				—Arthur Falk—	4635	1	
				—One— 501 Fifth Avenue New York, N. Y.			)

[fol. 108] 20. That plaintiff's Exhibit No. 9 in the Singleton case (tables 1 and 2) [herein Exhibit 8-P], are true and correct summaries of the stock transfers from Raymond W. Kelly during November 1930, and transfers to Kelly during the same month. That the testimony appearing at folios 323-326, inclusive, of the Singleton record relating to whether the transferees from Kelly during the month of November 1930 were depositors in the Harriman National Bank & Trust Company is true and correct.

[fol. 109] PLAINTIFF'S EXHIBIT 8-P

Table No. 1

1930	Certificates in name of Raymond Kelly surrendered No.	Shares		Certificates issued in place thereof No.	Shares
Nov. 3	4583	29	Francis J. Knox	4620	1
	4542	10	George E. Sealy	4621	1
			B. Schwanda Sons	4622	1
		39	Ralph Modjeski	4623	1
			The Frank A. Munsey Co.	4624	5
			Joseph Schaeffer	4625	10
			Walter H. Merrall	4626	10
			Elmer P. Merkle	4627	5
			William J. Elberth	4628	5
					39

PLAINTIFF'S EXHIBIT 8-P—Continued

Table No. 1—Continued

1930	Certificates in name of Raymond Kelly surrendered No.	Shares		Certificates issued in place thereof No.	Shares
6	4599	3	Henry E. Oppenheimer	4632	10
	4527	5	Edward R. West	4633	10
	4528	5	Mrs. Benveneda Davis	4634	5
	4587	25	Arthur Falk	4635	1
			Maud Bowman	4636	1
		38	Max E. May	4637	1
			Aaron A. Potter	4638	2
			Iphigene Ochs Sulzberger	4639	1
			Theodore Biens	4640	1
			Minnie S. Galinger	4641	2
			Clayton E. Freeman	4642	2
			Julius Keller	4643	2
					38
[fol. 110]					
Nov. 6	4459	1	Francis J. & Mrs. Elna Carman	4644	1
			To Kelly	4645–6	
			Sampson H. Schwarts	4647	
			To Kelly	4648–9	
	4607	15	Courtland H. Young	4650	10
	4555	5	William S. Coe	4651	4
	4456	5	Fred Vogel	4652	3
	4585	5	Ruth Benson Blinn	4653	3
			Earle H. McHugh	4654	1
		30	Florence Benel	4655	1
			Alfred Van Dorn	4656	1
			Frank E. De Borde	4657	1
			James P. McKinney	4658	1
			Kora M. Lublin	4659	1
					26
			Bal. to Kelly	4660	4
Nov. 7	4609	4	Daniel Smilo Sons	4664	2
			Mary Walls Inc	4665	2
					4
[fol. 111]					
Nov. 8	4649	5	Mrs. Mary L. MacDonald	4671	1
	4618	3	Louis Kilmarx	4673	1
	4606	2	Helwig Schier	4674	1
	4608	10	Burton C. Meighan	4675	1
	4645	5	Riggs Distler & Co., Inc	4676	1
			Mrs. Elizabeth C. Crittenden	4677	3
		25	Mrs. Dazie E. Richards	4678	2
			Frederick T. Mueller	4679	10
			Edward F. Shipman	4680	1
Mrs. Hattie Carnegie			David G. Aronberg	4681	1
4529 1 share		1	William Fried	4682	1
		26			23
			Bal. to Kelly	4683	3
					26

PLAINTIFF'S EXHIBIT 8-P—Continued

Table No. 1—Continued

1930	Certificates in name of Raymond Kelly surrendered No.	Shares		Certificates issued in place thereof No.	Shares
Nov. 11	4648	5	Leon E. Moon	4686	1
			Daniel T. Groff	4687	1
			Thomas F. Gurry	4688	1
			Mrs. Helen M. De Kay	4689	1
			Mrs. Zoe Helen Groff	4690	1
					5
[fol. 112]					
	4670	1	Franklin Simon	4692	1
Nov. 13	4646	5	Mrs. Leona R. Hess	4708	1
			Smith, Sturgis & Moore, Inc.	4709	1
			Phil S. Abrams	4710	1
			Bernard Kapp	4711	2
					5
14	4683	3	Mrs. Nellie T. McClunn	4717	3
	4701	5	Federal Seating Corp.	4718	1
	4660	4	Rooney Corp.	4719	63
	4347	9			64
	4345	7	Bal. to Kelly	4720	1
	4415	10			65
	4414	10			
	4412	10			
	4669	10			
		65			
Nov. 17	4697	10	Marshall Clapp	4725	1
			Mrs. Nellie B. Newcomb	4726	1
			Nicholas Murray Butler	4727	6
			James A. Graham	4728	1
			Raymond Kelly	4729	1
					10
[fol. 113]					
18	4693	10	Joseph O. McShane	4746	1
			William R. Teller	4747	1
			Mrs. Rosa F. Huyler Cooke	4748	1
			Thomas A. Moore	4749	6
			Raymond Kelly	4750	1
					10
19	4694	10	Ralph Farrington	4763	7
	4698	2	C. James Davis	4764	3
	4712	5	Frederick H. Engelken	4765	1
			Carolyn R. Alstatt	4766	1
		17	Charles Weber	4767	3
			Raymond Kelly	4768	2
					17

PLAINTIFF'S EXHIBIT 8-P—Continued

Table No. 1—Continued

1930	Certificates in name of Raymond Kelly surrendered No.	Shares			Certificates issued in place thereof No.	Shares
	Raymond					
Nov. 20	Kelly	4695	10	Mrs. Margery Du Pont	4774	5
	"	4720	1	Edward C. Rushmore	4775	5
	"	4702	15	A. Eugene Kirby	4776	3
				Arthur S. Allen	4777	1
			26	John M. Grognet	4778	1
				Irene F. Barrymore	4779	1
				Ella De Peyster	4780	10
						26
21	"	4750	1	Richard W. Lehne	4782	20
	"	4715	19	Lucius M. Bush	4783	1
	"	4729	1			21
			21			
24	"	4761	5	Henry Green	4784	1
[fol. 114]						
				John F. Sanderson	4785	2
				Mrs. Greta Pomeroy Clark	4786	1
				Raymond Kelly, Part of	4787	1
						5
24	"	4751	10	Miss Esther Schulman	4791	1
	"	4754	3	Robert S. Maffitt	4792	1
				Saratoga Company	4793	1
			13	Hyman G. Enelow	4794	1
				Mrs. Helen L. Howard	4795	1
				Mrs. Beth E. Dearborn	4796	1
				Mrs. Margaret Kennedy	4797	1
				Lloyd H. V. Reynolds	4798	1
				Mrs. Charlotte Eddy Morgan	4799	3
				Charles F. Rockwell	4800	2
						13
Nov. 28	Kelly	4752	10	Ralph Farrington	4808	1
				Samuel C. Freefield	4809	1
				Reuben P. Sleicher	4810	1
				Mrs. Louise McCarthy	4811	1
				Charles W. Berner	4812	1
				Alfred Van Horn	4813	1
				Frank E. De Borde	4814	1
				Thomas G. Wylie	4815	1
				Mrs. Margaret Singleton	4816	2
						10
29	"	4781	5	Claude Allen	4820	1
				Henry St. John Hyde	4821	1
				William V. Lifsey	4822	1
				Raymond Kelly	4823	2

PLAINTIFF'S EXHIBIT 8-P—Continued

[fol. 115]

Table No. 2

Certificates Acquired by Kelly in Nov. 1930

Date	No. of certificates issued to Kelly	No. of shares	From whom transferred	No. of certif.	No. of shares
Nov. 6	4645	5	Samson H. Schwarz	3526	12
	4646	5	"		
			Bal. to Schwarz No.	4647	
	4648	5	Bernard W. Vogel	2936	5
	4649	5	Fleischer & Morgenstern	2785	5
8	4669	10	Mathias Niewenhous	3776	4
	4670	1	A. M. Kidder & Co.	3205	1
			Sampson H. Schwarz	4647	2
		11	"	3804	4
					11
	4683	3	Miss Hattie Carnegie	4529	
			Bal. from Kelly		
12	4693	10	Mrs. Lillian Cohen	4176	15
	4694	10	John B. Johnston	1425	15
	4695	10	William Vetter	4256	2
	4696	10	George K. Morrow	2867	5
				3741	5
	4697	10	Rudolph Buckner	3599	5
	4698	2	"	2732	5
		52			52
	4701	5	Mrs. Kathryn Wormley	2987	5
Nov. 13	4702	15	David A. Ansbacher	2704	25
			The other 10 were transferred to Grannis Doty & Co. 4703–4 5 shares each		
[fol. 116]					
	4712	5	John Zanft	3873	8
			The other 3 were transferred back to John Zanft 4713		
Nov. 14	4715	19	Paul J. Bonwit	3587	6
			"	4334	1
			Lee Deutsch	4601	5
			Mrs. Anna E. Gordon	4179	1
			Riley & Co.	3944	1
			"	3004	3
			William Zentler	2838	2
					19
17	4730	16	Wm. Zentler	173	2/3
			August J. Lehner	210	1/3
			Grannis Doty & Co.	4700	5
			"	4704	5
				4703	5
					16
			Abraham M. Burd	3277	5
Nov. 18	4751	10	Frederick Korf	2400	5
	4752	10	"	4013	1
	4753	10	"	2837	2

PLAINTIFF'S EXHIBIT 8-P—Continued

[fol. 117]

Table No. 2—Continued

Certificates Acquired by Kelly in Nov. 1930

Date	No. of certificates issued to Kelly	No. of shares	From whom transferred	No. of certif.	No. of shares
	4754	3	"	3720	2
			John B. Johnstone	4705	5
		33	"	3190	2
			"	4450	3
			David Willens	4714	8
					33
Nov. 19	4761	5	Rieser & Co.	4193	10
			Bal. to Rieser & Co. No. 4762 5 shares.		
20	4781	5	Hurley & Co.	4723	5
24	4787	16	Raymond E. Boylan	4755	5
			Rieser & Co.	4762	5
			Hurley & Co.	4736	5
			Bal. to Kelly		
	4801	10	Bicher & Co.	4731	10
	4802	1	Nathan Ratnoff	4181	1
26	4804	5	Juan Kunsler	4161	5
	4805	1	Mrs. Elisabeth Butterworth	4352	1
	4807	5	Rieser & Co.	4213	10
			Bal. 5 No. 4806 to Rieser & Co.		
29	4818	5	Hurley & Co.	4737	5
	4819	1	"	4741	1

All the transferees from Kelly listed above were depositors with The Harriman Bank during this period, or officers of corporations or members of partnerships that were depositors, with the exception of:

Bowman, Galinger, Benel, Van Horn, DeBorde, Mac Donald, Kilmark, Curry, DeKay, McCunn, Graham, Alstatt, Schulman, Maffitt, Saratoga Co., Lifsey.

21. That the bank shares represented by stock certificate numbers 4599, 4527, 4528 and 4587, standing in the name [fol. 118] of Raymond W. Kelly during the month of November 1930, and from which 10 shares were transferred to the plaintiff herein, were held by the following persons prior to their transfer to Kelly:

October 22, 1930, certificate #4072 for 15 shares in the name of James Aspell surrendered for certificates #4526 for 10 shares in the name of James Aspell and #4527 for 5 shares in the name of Raymond W. Kelly.

October 23, 1930, certificate #4491 for 5 shares in the name of McKenna & Company surrendered for Certificate #4528 for 5 shares in the name of Raymond W. Kelly.

October 29, 1930, certificates #4512, 4508 and 4513 for 5 shares each in the name of Walter J. Salmon, certificate #4106 for 5 shares in the name of Hurley & Company, and certificate #4165 for 5 shares in the name of George Aimsworth—all surrendered for certificate #4587 for 25 shares in the name of Raymond W. Kelly.

October 29, 1930, certificate #4127 for 4 shares in the name of Sampson H. Schwarz surrendered for certificate #4599 for 3 shares in the name of Raymond W. Kelly and certificate #4600 for 1 share in the name of Thomas McWaters.

22. The following table contains a correct statement of the quotations published in the New York Times on the several dates listed in the column headed "Date of Paper" [fol. 119] of the bid and asked prices for stock of The Harriman National Bank and Trust Company under the heading "Banks and Trust Companies", the quotations after each date being the quotations published that day for the preceding day, except as stated in the last column of said exhibit, and in such cases for the day stated in the last column.

(This is omitted from printing. See infra, p. 141, being Defendants' Exhibit AA.)

25. That plaintiff's Exhibits numbers 17 and 18 in the Singleton case are true and correct copies of the balance sheets of the Harriman National Bank & Trust Company of November 1st and November 24th, 1930.

[fol. 119]

Harriman National Bank and Trust Company
Morning of Nov. 1-1930

	Main Office	Liberty Street Office	Total
Capital	2,000,000 —		
Surplus	2,000,000 —		
Profit & Loss	300,950.94	21,600.06	
Reserve for Contingencies	186,886.80	2,500 —	
	4,487,837.74	24,100.06	4,511,937.80
Demand Deposits:			
Individual—A-Bry	4,516,724.97		
" —Bu-Der	3,626,004.49		
" —Des-Gl	3,230,911.69		
" —Go-Hy	2,999,196.74		
" —I-Lo	2,810,344.88		
" —Lu-Ni	3,189,780.50		
" —No-Ru	3,246,597.91		
" —Ry-Ta	3,299,421.00		
" —Te-Z	2,784,917.32		
" —Sundry Inactive A-Z	220,652.68		
Total Individual Deposits	29,924,554.18	5,636,480.47	

Harriman National Bank and Trust Company
Morning of Nov. 1–1930

[fol. 120]	Main Office	Liberty Street Office	Total
Due to Banks and Trust Companies A-Z	2,457,197.18		
Sundry Accounts			
Certificates of Deposit		25,000 —	
Cashier's Checks	153,753.82	30,240.36	
Dividend Checks	1,592.50		
Certified Checks — Chase National Bank	22,816.95		
Certified Checks—Outstanding	319,027.78	1,012,736.72	
Liberty Loan Settlement Account			
First National Bank, Seward, Alaska, in liquidation (Settlement Account)	778.43		
Due to Trust Department	155,974.54	69,928.96	
Due to Trust Department—Downtown Banking House			
Total Demand Deposits	33,035,695.38	6,774,386.51	39,810,081.89
Time Deposits:			
Certificates of Deposit	346,000 —		
Trustees Postal Savings System	369,717.74		
Thrift Department	746,510.53		
Total Time Deposits	1,462,228.27		1,462,228.27
Reserved for Fixed Expenses	36,821.51	3,054.30	
Reserved for Taxes	118,217.80		
Reserved for Interest on Balances	52,626.28	3,014.92	
Total Reserves	207,665.59	6,069.22	213,734.81
Other Liabilities:			
Unearned Discount	131,898.01	5,342.82	
Due to Foreign Department	20,379.60		
Due to Bond Department			
Bills Payable with Federal Reserve Bank	0		
Outstanding Circulation	299,995 —		
Main Office—Branch Office	4,319,761.89)		
Rediscounts with Federal Reserve Bank	700.00)		
Total Other Liabilities	4,772,734.50	5,342.82	4,778,077.32
Customers' Participation:			
Time Collateral Loan—Customers'			
Time Collateral Loan—Brokers'			
Demand Collateral Loan—Customers'			
Demand Collateral Loan—Brokers'	200,000 —		
Dealers Paper			
Total Customers Participations	200,000 —		200,000 —
Total Liabilities	44,166,161.48	6,809,898.61	50,976,060.09

Harriman National Bank and Trust Company
Morning of Nov. 1-1930

	Main Office	Liberty Street Office	Total
[fol. 121]			
Earnings:			
Discount Received	236,692.51	2,342.43	
Exchange	125.78		
Interest on Investments	81,231.26		
		700.00)	
Interest on Loans	156,325.60	37,975.45)	
Interest on Bank Balances	3,938.89		
Commissions	7,787.21	138.65	
Trust Department earnings	20,027.40		
Foreign Department earnings			
Bond Department earnings	5,000 —		
Teller's differences			
Service Charges on Loans		18,149.23	
Total Income	511,128.65	59,305.76	570,434.41
Total Credits	44,677,290.13	6,869,204.37	51,546,494.50
Cash	616,146.88	39,467.39	
Exchanges	801,950.38	1,984,479.56	
City Collections	290,239.38		
Out of Town Collections			
Inter-office Checks			
Cash Items	350.—	342.09	
Total	1,708,686.64		
Difference Over	250.77		
	1,708,435.87	2,024,289.04	3,732,724.91
Due from Banks:			
Federal Reserve Bank	4,162,637.13		
Chase National Bank	408,622.58		
National City Bank	358,032.72		
Bank of the United States	5,560.25		
Chatham Phenix Nat. Bank and Trust Co.	369,545.47		
Miscellaneous—A-Z	253,344.55		
Items with Fed. Res. Bk. in Process of Collect'n	1,049,360.38		
Total Due From Banks	6,607,103.08		6,607,103.08
[fol. 122]			
Unsecured Loans:			
Bills Purchased	1,418,175 —		
Bills Discounted	10,206,332.67	254,103.03	
Secured Loans:			
Time—Customers	1,462,496.73	2,700 —	
Time—Brokers			
Demand Loan Customers—Held at Downtown Banking House	385,000 —		
Demand—Customers	5,476,412.35	234,735.05	
Demand—Brokers	6,930,000 —		
Total Loans	25,878,416.75	491,538.08	26,369,954.83

Harriman National Bank and Trust Company
Morning of Nov. 1-1930

	Main Office	Liberty Street Office	Total
Investments in Securities:			
U. S. Government:			
Pledged to secure circulation	300,000 —		
Pledged to secure State and other deposits	653,225 —		
Pledged to secure bills payable	0		
Unpledged	2,302,027.36		
Total	3,255,252.36		3,255,252.36
Other Bonds and Stocks:			
Bonds pledged to secure Trust deposits	960,015 —		
Bonds pledged to secured Postal Savings Deposits	343,055 —		
Bonds unpledged	2,372,032.65		
Stocks	134,363 —		
Stock of Federal Reserve Bank	120,000 —		
Bonds & Mortgages	67,678.25		
Total	3,997,143.90		3,997,143.90
Other Resources:			
Banking House Equity	2,300,000 —		
Accrued Interest Receivable	93,766.10	407.37	
Accounts Receivable—Trust Department	4,791.11		
Redemption Fund with U. S. Treasurer (5% Fund)	15,000 —		
Due from Foreign Department			
Due from Bond Department	552,887.78		
International Magazine Co., Inc. Missing Cancelled Checks on Harriman N/B [fol. 123] Credited Back to Their A/C	394.23		
Main Office—Branch Office		700.00 4,319,761.89	
Exchanges for Clearing House	10,468.84		
Sundry Accounts	49,906.88		
Total Other Resources	3,027,214.94	4,320,869.26	7,348,084.20
Total Assets	44,473,566.90	6,836,696.38	51,310,263.28
Expenses:			
Interest Paid Federal Reserve Bank	1,054.79		
Exchange			
General	148,161.61	19,174.64	
Rent	25,633.32	13,333.35	
Trust Department	20,337.14		
Tellers' Differences	16.14		
Reserved for Interest Paid on Balances			
Service Charges on Loans	8,520.23		
Total Expenses	203,723.23	32,507.99	236,231.22
Total Debits	44,677,290.13	6,869,204.37	51,546,494.50
Trust Dept. Control A/C	24,800,027.58	5,502,986.50	30,303,014.08

Harriman National Bank and Trust Company

Morning of Nov. 24–1930

	Main Office	Liberty Street Office	Total
Capital	2,000,000 —		
Surplus	2,000,000 —		
Profit & Loss	301,075.94	21,600.06	
Reserve for Contingencies	179,485.80	2,500 —	
	4,480,561.74	24,100.06	4,504,661.80
Demand Deposits:			
Individual—A-Bry	4,263,522.28		
" —Bu-Der	3,217,312.77		
" —Des-Gl	3,381,557.26		
" —Go-Hy	2,766,333.66		
" —I-Lo	3,005,326.85		
" —Lu-Ni	3,201,792.91		
" —No-Ru	3,063,481.34		
" —Ry-Ta	3,154,952.47		
" —Te-Z	2,996,743.45		
" —Sundry Inactive A-Z	232,213.83		
Total Individual Deposits	29,283,236.82	4,040,078.03	
[fol. 124]			
Due to Banks and Trust Companies A-Z	2,769,988.40		
Sundry Accounts			
Certificates of Deposit			
Cashier's Checks	113,922.07	7,638.65	
Dividend Checks	1,592.50		
Certified Checks—Chase National Bank	22,816.95		
Certified Checks—Outstanding	166,302.50	35,716.76	
Liberty Loan Settlement Account			
First National Bank, Seward, Alaska, in liquidation (Settlement Account)	778.43		
Due to Trust Department	127,377.58	56,927.27	
Due to Trust Department—Downtown Banking House			
Total Demand Deposits	32,486,015.25	5,040,360.71	37,526,375.96
Time Deposits:			
Certificates of Deposit	344,500 —		
Trustees Postal Savings System	369,717.74		
Thrift Department	767,868.00		
Total Time Deposits	1,482,085.74		1,482,085.74
Reserved for Fixed Expenses	31,849.12	3,054.30	
Reserved for Taxes	118,217.80		
Reserved for Interest on Balances	49,764.31	2,880.17	
Total Reserves	199,831.23	5,934.47	205,765.70

Harriman National Bank and Trust Company
Morning of Nov. 24 1930

	Main Office	Liberty Street Office	Total
Other Liabilities:			
Unearned Discount	170,401.30	5,359.82	
Due to Foreign Department	16,404.71		
Due to Bond Department	.....		
Bills Payable with Federal Reserve Bank	—0—		
Outstanding Circulation	284,095 —		
Main Office—Branch Office	3,849,545.41		
Rediscounts with Federal Reserve Bank	.....		
Total Other Liabilities:	4,320,446.42	5,359.82	4,325,806.24
Customers' Participation:			
Time Collateral Loan—Customers'	.....		
Time Collateral Loan—Brokers'	.....		
Demand Collateral Loan—Customers'	100,000 —		
Demand Collateral Loan—Brokers'	100,000 —		
Dealers Paper	.....		
Total Customers Participations	200,000 —	.....	200,000 —
Total Liabilities	43,168,940.38	5,075,755.06	48,244,695.44

[fol. 125]

Earnings:			
Discount Received	236,692.51	2,342.43	
Exchange	.....		
Interest on Investments	83,495.80		
Interest on Loans	158,401.37	38,936.37	
Interest on Bank Balances	3,992.96		
Commissions	9,525.60	160.50	
Trust Department earnings	21,290 —		
Foreign Department earnings	.....		
Bond Department earnings	5,000 —		
Tellers' differences	.....		
Service Charges on Loans	.....	18,419.83	
Total Income	518,398.24	59,859.13	578,257.37
Total Credits	43,687,338.62	5,135,614.19	48,822,952.81
Cash	557,584.86	29,855.22	
Exchanges	621,824.14	94,939.96	
City Collections	304,471.00		
Out of Town Collections	73,492.58		
Inter-office Checks	.....		
Cash Items	2,010.74	1.10	
Total	1,559,383.32		
Difference Over	2.01		
	1,559,381.31	124,796.28	1,684,177.59

Harriman National Bank and Trust Company
Morning of Nov. 24–1930

	Main Office	Liberty Street Office	Total
Due from Banks:			
Federal Reserve Bank	4,136,006.97		
Chase National Bank	254,619.63		
National City Bank	158,032.72		
Bank of the United States	5,560.25		
Chatham Phenix Nat. Bank and Trust Co.	169,545.47		
Miscellaneous—A-Z	329,803.28		
Items with Fed. Res. Bk. in Process of Collect'n	994,966.24		
Total Due From Banks	6,048,534.56		6,048,534.56
[fol. 126] Unsecured Loans:			
Bills Purchased	1,732,437.51		
Bills Discounted	10,431,657.38	255,103.03	
Secured Loans:			
Time—Customers	1,465,736.75	502,700 —	
Time—Brokers			
Demand Loan Customers—Held at Downtown Banking House	275,000 —		
Demand—Customers	5,435,095.90	364,545.45	
Demand—Brokers	6,330,000 —		
Total Loans	25,669,927.54	1,122,348.48	26,792,276.03
Investments in Securities: U. S. Government:			
Pledged to secure circulation	300,000 —		
Pledged to secure State and other deposits	653,225 —		
Pledged to secure bills payable			
Unpledged	2,302,027.36		
Total	3,255,252.36		3,255,252.36
Other Bonds and Stocks:			
Bonds pledged to secure Trust deposits	960,015 —		
Bonds pledged to secure Postal Savings deposits	343,055 —		
Bonds unpledged	2,318,032.65		
Stocks	134,363 —		
Stock of Federal Reserve Bank	120,000 —		
Bonds & Mortgages	67,678.25		
Total	3,943,143.90		3,943,143.90
Other Resources:			
Banking House Equity	2,300,000 —		
Accrued Interest Receivable	41,563.56		
Accounts Receivable—Trust Department	4,816.11		
Redemption Fund with U. S. Treasurer (5% Fund)	15,000 —		
Due from Foreign Department			
Due from Bond Department	559,252.54		
International Magazine Co., Inc. Missing Cancelled Checks on Harriman N/B Credited Back to Their A/C	394.23		

Harriman National Bank and Trust Company
Morning of Nov. 24–1930

[fol. 127]	Main Office	Liberty Street Office	Total
Main Office—Branch Office	.....	3,849,536.58	
Exchanges for Clearing House	7,593.46		
Sundry Accounts	49,906.88		
Total Other Resources	2,978,526.78	3,849,536.58	6,828,063.36
Total Assets	43,454,766.45	5,096,681.34	48,551,447.79
Expenses:			
Interest Paid Federal Reserve Bank	1,054.79		
Exchange	117.44		
General	167,448.09	22,057.83	
Rent	32,041.65	16,875.02	
Trust Department	23,099.41		
Tellers' Differences	19.96		
Reserved for Interest Paid on Balances	.....		
Service Charges on Loans	8,790.83		
Total Expenses	232,572.17	38,932.85	271,505.02
Total Debits	43,687,338.62	5,135,614.19	48,822,952.81
Trust Dept. Control A/C	24,898,540.61	5,473,318.75	30,371,859.36

26. That plaintiff's Exhibit No. 19 in the Singleton case is a true and correct copy of a trust agreement between stockholders of the Harriman National Bank & Trust Company of the City of New York and Joseph W. Harriman, John A. Noble and Bertram L. Kraus, as a committee for such stockholders, providing for the organization of Harriman Securities Corporation, dated April 16, 1925.

[fol. 128] AGREEMENT BETWEEN STOCKHOLDERS OF THE HARRIMAN NATIONAL BANK OF THE CITY OF NEW YORK AND JOSEPH W. HARR-MAN, JOHN A. NOBLE AND BERTRAM L. KRAUS, AS A COMMITTEE OF SUCH STOCKHOLDERS, PROVIDING FOR THE ORGANIZATION OF HARRIMAN SECURITIES CORPORATION

April 16, 1925

Agreement made this 16th day of April, 1925, by and between Joseph W. Harriman, John A. Noble and Bertram L. Kraus, hereinafter called the "Trustees," parties of the first part, and Howard W. Charles, Julius Lichtenstein and Abram L. Leeds, and other subscribers hereto, who are shareholders of The Harriman National Bank of the City of

New York, hereinafter called the "Subscribers," parties of the second part, as follows:

[fol. 129] Whereas, the parties of the first part are officers or directors of The Harriman National Bank of the City of New York, hereinafter designated as the "Bank," and each and every — of the parties of the second part is a stockholders of the Bank; and

Whereas, the Bank being organized as a National Banking Corporation, is limited in its power to acquire and hold securities, stocks and other property, and finds that such limitation of power is prejudicial to the conduct of the legitimate business of the Bank, in that it serves as a curtailment of its earning capacity; and

Whereas, the parties hereto believe that such disability may be partially overcome and avoided by the organization and maintenance of a business corporation, to be organized under the Laws of the State of New York, hereinafter designated as the "Securities Company," for the purpose of purchasing, holding, selling and dealing in securities, and other investments and transactions that may be permitted under its articles of incorporation.

Now, therefore, in consideration of the premises and of the sum of One Dollar ($1), by each of the parties hereto paid to the other, the receipt whereof is hereby acknowledged, and of the mutual covenants and agreements herein contained, the parties hereto do agree as follows:

First. That a Corporation shall be organized under the Laws of the State of New York, with an authorized stock issue of ten thousand (10,000) shares of no par value, under the title of "Harriman Securities Company" or such other [fol. 130] name as may be available, and with such powers as the Trustees may deem advisable.

Second. Each shareholder of the Bank shall have the right to a beneficial-interest through the Trustees in the capital stock of the Securities Company, to the extent of the shares held by him in The Harriman National Bank of the City of New York, and registered in his name at the date of the closing of the transfer books for the special dividend hereinafter referred to, provided he shall exercise such right, by becoming a party to this agreement on or before the 18th day of May, 1925; after that date the Trustees may, in their discretion, and upon such terms, as to price or otherwise, as they may prescribe, permit the holders of

stock of the Bank in respect to which such right may not have been exercised, to acquired shares in the Securities Company equivalent to the number of shares held by him in the Bank.

Third. Each shareholder subscribing shall receive a beneficial interest in the shares of the Securities Company equivalent in number to those held by him in the Bank.

Fourth. In order to facilitate participation by the shareholder of the Bank in the option specified in the foregoing paragraph, the Trustees will recommend to the Board of Directors of the Bank that a special dividend of fifty per cent. (50%) upon the capital stock be declared and paid to its shareholders, to the end that no outlay shall be required of them in the purchase of the stock, but the subscribers agree that if such dividend is declared and paid, they will, respectively, forthwith apply the same to the payment of [fol. 131]the capital stock of the Securities Company, and to that end, they hereby assign, transfer and set over such dividend, as and when declared, to the Trustees, jointly, for the purpose of making such payment; and they hereby empower and direct the Bank to pay to the Trustees for their account, respectively, the amount of such dividend, which the Trustees shall forthwith apply to the payment of the capital stock of the Securities Company, to the beneficial-interest in which the subscribers, respectively, may become entitled hereunder.

Fifth. All of the capital stock of the Securities Company paid for on behalf of the subscribers as aforesaid, shall be issued to and held by the Trustees jointly, and their successors in interest, according to their respective interests but said beneficial-interests of the subscribers therein shall not be transferable separately, but only by the transfer of the shares of stock of the Bank held by them, respectively and every sale or transfer of stock of the Bank by a subscriber, or his successor, shall include the beneficial-interest of such subscriber, or his successor, and the capital stock of the Securities Company attaching to the shares of the Bank so sold or transferred.

Sixth. As soon as said special dividend is declared by the Bank and the Subscribers have been notified by the Trustees of the organization of the Securities Company, they shall at once present to the Trustees, at the office of the

Bank, No. 527 Fifth Avenue, New York City, the certificates of stock of the Bank held by them, respectively, for the purpose of having stamped thereon the endorsement, in substance as follows:

[fol. 132] "The registered holder of the share or shares of stock represented by the within certificate is entitled to a beneficial-interest in an equivalent amount of shares represented by said certificate, in the capital stock (of no par value), of the Harriman Securities Company, a New York corporation, under the terms of a certain agreement dated April 16th, 1925, made between Joseph W. Harriman, John A. Noble and Bertram L. Kraus, Trustees, parties of the first part, and Howard W. Charles, Julius Lichtenstein and Abram L. Leeds, and other subscribers, as shareholders of The Harriman National Bank, parties of the second part —subject to all the agreements, terms and conditions contained in the said agreement, which is hereby made a part of this endorsement, with the same force and effect as if it had been set forth in full, and which agreement is on file in the office of the Trustees, c/o The Harriman National Bank, 527 Fifth Avenue, New York City."

Joseph W. Harriman, John A. Noble, Bertram L. Kraus, Trustees, by —— ——, Agent.

Seventh. Each holder of a certificate of bank stock is entitled to share equally and ratably with all other holders of stock certificates of the Bank, similarly endorsed, according to their several interests in the dividends or profits, and in case of dissolution, in the distribution of the capital of the Harriman Securities Company; such ratable interest [fol. 133] to be sold or transferred ratably only, by the transfer upon the books of the Bank of one or more shares of stock in the Bank, represented by a Bank stock certificate bearing the above endorsement; and all of the interest in and to, or in respect of said Securities Company, or its capital stock, represented by a Bank stock certificate bearing said endorsement shall pass ratably with and only with the transfer of such shares of the Bank represented by such bank stock certificate, and upon the transfer thereof upon the books of the Bank, and an interest in the Securities Company attached to any share of the Bank, shall be alienable only in connection with such transfer of such Bank stock.

No holder of a Bank Stock Certificate, or any transferee

of any share thereby represented, shall be entitled, in lieu thereof, to demand or to receive from the Bank a new certificate, except with said endorsement thereon; and the transfer of any share of the Bank stock containing said endorsement shall be made by the holder thereof, only to a transferee accepting therefor a new certificate bearing said endorsement.

No right to vote in respect of any share of stock of the Securities Company passes to, or shall be exercised by the holder of such certificate, such voting right being reserved to and by the Trustees, or their successors.

Eighth. From and after the placing of such endorsement upon any Bank stock certificate, the registered holder thereof shall be invested with such rights in respect to the Securities Company, or of its capital stock, as are indicated in this agreement, or in such endorsement, only and shall [fol. 134] have no right to vote any stock of the Securities Company, which right to vote is and shall be reserved exclusively to and by the Trustees, and their successors.

Ninth. No person other than a director of the Bank shall be eligible for office of director of the Securities Company; and if, after election, any such director of the Securities Company, for any reason shall cease to be a director of the Bank he shall simultaneously, as a matter of course, cease to be a director of the Securities Company.

Tenth. The number of Trustees under the Trust herein created shall be three (3) in number, all of whom shall be directors of the Bank. If any Trustee shall cease to be a director of the Bank, or by reason of death, disability or resignation, shall cease to perform his duties as Trustee hereunder, then his office as Trustee shall become vacant, and the remaining Trustees shall forthwith elect or appoint a successor. The Trustees, and such other persons as they may designate, who shall be directors of the Bank, shall constitute the first Board of Directors of the Securities Company. Any Trustee may, at any time, resign, by delivering his resignation to the other Trustees in writing. No Trustee shall be liable for the act of any other Trustee, but shall be liable only for his own wilful misconduct.

The Trustees may act by a majority, either at a meeting, or by writing, with or without a meeting.

Eleventh. There shall be stamped upon the certificates of stock issued by the Securities Company to the Trustees the following endorsement:

[fol. 135] "The share or shares of stock represented by this certificate are held by the Trustees named, and their successors, in trust, for the benefit of the shareholders of The Harriman National Bank of the City of New York entitled to the beneficial interest therein, according to the terms of a certain agreement dated April 16th, 1925, made between Joseph W. Harriman, John A. Noble and Bertram L. Kraus, Trustees, parties of the first part, and Howard W. Charles, Julius Lichtenstein and Abram L. Leeds, and other subscribers, as shareholders of the Harriman National Bank, parties of the second part."

All dividends upon the capital stock of the Securities Company, and all distribution of capital thereon, shall be paid by the Trustees of those shareholders of the Bank whose certificates shall be stamped as aforesaid, according to their respective interests. Such payments may be made by the Trustee- to the said shareholders directly, or to the Bank for their account and the Bank, in such case, shall thereupon distribute such dividends among those entitled to receive the same, at the same time as dividends are distributed upon the shares of stock held by them in the Bank, in so far as such distribution, in that manner and at such times, may be practicable. Payment by the Trustees to the Bank shall relieve the Trustees from all further liability with respect thereto.

Twelfth. This agreement may at any time be amended, modified or terminated, with the written consent of the Trustees and of two-thirds in interest of those for whom the capital stock of the Securities Company is then held by the Trustees.

[fol. 136] Thirteenth. All compensation of the Trustees and the charges, costs and expenses connected with the organization of the Securities Company, shall be paid by the Securities Company, and it shall also hold harmless the Trustees from all personal liability hereunder, except for their own wilful misconduct.

Fourteenth. Upon the termination of this agreement, the shares of stock of the Securities Company shall be distrib-

uted ratably to and among the holders of record of stock certificates of said Bank then outstanding and endorsed as aforesaid, in proportion to their several holdings.

Fifteenth. The Trustees, from time to time, will exercise their best judgment in the selection of directors of the Securities Company, so that its affairs may be properly managed, and also in any matter which may come before them; but they shall incur no liability in this respect, except for their own negligence or wilful malfeasance.

Sixteenth. All copies of this agreement, executed by the persons entitled to do so, shall have the like effect as if the signatures were subscribed to the original and the stamping of the certificates of stock of the Bank held by subscribers, in the manner hereinabove specified, shall have the same force and effect, as if they had executed the agreement.

Seventeenth. This agreement shall not be binding until it shall have been signed by stockholders of record of at least three-quarters in amount of the capital stock of the Bank and so declared by the Trustees, who may, in their [fol. 137] discretion, require a larger amount of subscriptions before declaring this agreement operative and in effect.

In witness whereof, the parties of the first and second part have hereunto set their hands and seals, the day and year first above written.

(Signed) Joseph W. Harriman, John A. Noble and Bertram L. Kraus, "Trustees," Howard W. Charles, Julius Lichtenstein and Abram L. Leeds, and Witness:

Trustees:

Joseph W. Harriman. (L. S.) John A. Noble, (L. S.)
Bertram L. Kraus. (L. S.) Howard W. Charles. (L. S.)
Julius Lichtenstein (L. S.) Abram L. Leeds. (L. S.)
H W C. J. L. A L L.

[fol. 138] DEFENDANT'S EXHIBIT A

Harriman National Bank & Trust Company
Bond Department
527 Fifth Avenue, New York

No. A 2178.

Credit
Customer's Account
Bond Department

Bought of Henry E. Oppenheimer & Co.

1/22/32

Shares—

Par Value of Bonds—6M

Description—Equitable Gas Lt. Co. of N. Y. 5% due 3/1/32

Price—100

Amount—6,000.00 CR. A/C

Commission—

Tax—

Interest or Dividend—

Total—6,000.00

[fol. 139] DEFENDANT'S EXHIBIT AA

(This consists of certain portions of the stipulation, being Plaintiff's Exhibit 8 herein.)

18. • • •

That said Raymond W. Kelly, being sworn as a witness for the defendant, would testify that the months of July, 1930, January, 1931, and July, 1931, were the only times when dividends were declared on such a stock. The dividends were paid, in respect to the shares of stock which stood in his name, by checks of the Trust Department, which checks were marked in evidence in the Singleton

case as defendant's exhibits G1 to G4, respectively [herein Defendants' Exhibits AA-1 to 4]; that the check for the July, 1931 dividend, Exhibit G4 in the Singleton record, was endorsed by him and handed to Mr. Burke or Mr. Klein of the Harriman Securities Corporation and entered on the cash book of the Harriman Securities Corporation as dividend received on Harriman and National Bank and Trust Company stock, July 3, 1931, $4882.50; that he endorsed the check for the January, 1931 dividend, Exhibit G3 in the Singleton record, and gave it to either Mr. Burke or Mr. Klein, and it was entered in the cash book of the Harriman Securities Corporation as dividend received on Harriman National Bank stock, January 3, 1931, $3202.50; that the two checks for the July, 1930 dividend, Exhibits G1 and G2, in the Singleton record, were signed with his name but not endorsed by him, and entered in the cash book of the Harriman Securities Corporation as dividends received on Harriman National Bank stock, July 7, 1930, $2800; that he does not know in what account these last two checks were deposited. Exhibits G1 to G4 in the Singleton record may be read in evidence as they appear in such record.

[fol. 140] DEFENDANTS' EXHIBIT AA-1

New York, July 3rd, 1930. No. 357.

The Harriman National Bank & Trust Co., 1-126 of the City of New York

Fifth Avenue and Forty-Fourth Street

Pay Harriman Nat. Bk. & Tr. Co. $17 and 50 cts.

To the order of Mr. Raymond Kelly % Harriman National Bank & Tr. Co., 527 Fifth Avenue, New York City, New York.

A. M. Austin, Vice-President.

Harriman Nat'l Bank & Trust Co. Div. No. 28.
Harriman Nat'l Bank & Trust Co. Extra Div.
Harriman Securities Corp. Dividend No. 6.

(Perforated:) Paid *7 *8 30. HNB.

7—588-670

(Stamped on Face:) Jul. 8, 1930.

(Endorsed:) Raymond Kelly. Pay to the order of The Harriman National Bank & Trust Co., Harriman Securities Corporation, W. A. Burke, Treas.

[fol. 141] DEFENDANTS' EXHIBITS AA-2, AA-3, AA-4

(These are substantially similar in form to Defendants' Exhibit AA-1.)

23. The table of photostatic sheets consisting of five (5) pages, annexed hereto and marked Exhibit H, contains a statement of the mean bid and asked prices at the end of each week commencing October 5, 1929 and ending in 1932, to the nearest quarter-dollar, of the stock of The Harriman National Bank & Trust Company. All this is prepared from data published in the Commercial & Financial Chronicle, the same being Exhibit M in the Jaskow case.

1929: 10/5, 1850; 10/12, 1912½; 10/19, 2002¼; 10/26, 1850; 11/2, 1850; 11/9, 1750; 11/16, 1800; 11/23, 1675; 11/30, 1600; 12/7, 1637½; 12/14, 1675; 12/21, 1775; 12/28; 1775.

1930: 1/4, 1775; 1/11, 1775; 1/18, 1800; 1/25, 1350; 2/1, 1425; 2/8, 1450; 2/15, 1450; 2/22, 1450; 3/1, 1450; 3/8, 1450; 3/15; 1450; 3/22, 1450; 3/29, 1450; 4/5, 1475; 4/12, 1515; 4/19, 1535; 4/26, 1535; 5/3, 1500; 5/10, 1550; 5/17, 1550; 5/24, 1525; 5/31, 1565; 6/7, 1550; 6/14, 1520; 6/21, 1550; 6/28, 1550; 7/5, 1550; 7/12, 1495; 7/19, 1550; 7/26, 1560; 8/2, 1560; 8/9, 1560; 8/16, 1550; 8/23, 1520; 8/30, 1550; 9/6, 1550; 9/13, 1565; 9/20, 1550; 9/27, 1565; 10/4, 1550; 10/11, 1550; 10/18, 1462½; 10/25, 1550; 11/1, 1550; 11/8, 1487½; 11/15, 1550; 11/22, 1505; 11/29, 1560; 12/6, 1560; 12/13, 1560; 12/20, 1550; 12/27, 1550.

1931: 1/3, 1550; 1/10, 1565; 1/17, 1565; 1/24, 1550; 1/31, 1550; 2/7, 1550; 2/14, 1550; 2/21, 1550; 2/28, 1550; 3/7, [fol. 142] 1550; 3/14, 1550; 3/21, 1550; 3/28, 1550; 4/4, 1550; 4/11, 1550; 4/18; 1550; 4/25, 1550; 5/2, 1550; 5/9, 1550; 5/16, 1550; 5/23, 1550; 5/30, 1550; 6/6, 1550; 6/13, 1550; 6/20, 1550; 6/27, 1550; 7/4, 1535; 7/11, 1535; 7/18, 1535; 7/25, 1535; 7/25, 1535; 8/1, 1535; 8/8, 1535; 8/15, 1535; 8/22, 1535; 8/29, 1535; 9/5, 1535; 9/12, 1535; 9/19,

1535; 9/26, 4535; 10/3, 1535; 10/10, 1535; 10/17, 1445; 10/24, 1465; 10/31, 1450; 11/7, 1450; 11/14, 1395; 11/21, 1440; 11/28, 1440; 12/5, 1440; 12/12, 1440; 12/19, 1440; 12/26, 1440.

1932. ½ 1440; 1/9, 1420; 1/16, 1420; 1/23, 1420; 1/30, 1420; 2/6, 1420; 2/13, 1420; 2/20, 1420; 2/27, 1420; 3/5, 1400; 3/12, 1390; 3/19, ——; 3/26, 1390; 4/2, 1390; 4/9, 1390; 4/16, 1390; 4/23, 1370; 4/30, 1370; 5/7, 1350; 5/14, 1300; 5/21, 1240; 5/28, 1290*; 6/4, 1190*; 6/11, 1190*; 6/18, 1190*; 6/25, 1100*—no further quotations published.

24. The following table contains a correct statement of the number of shares, capital funds, book value of stock, par value of stock, market value of stock, percentage of market value to book value, dividend rates and changes in capital set-up of The Harriman National Bank & Trust Company for each quarter of the year beginning October 4, 1929, and ending September 30, 1934. The same being Exhibit N in the Jaskow case.

* Asked.

[fol. 143] Harriman National Bank & Trust Bank

Date	Shares	Capital Funds	Book Value	Market Value	% Mkt. Val. to Book Val.	Par Value
September 30, 1929	15,000	$4,322,200	288.15	1800	6.24	$100
December 31, 1929	*20,000	5,009,700	250.49	1700	6.79	"
March 31, 1930	"	4,395,700	219.78	1400	6.38	"
June 30, 1930	"	4,725,000	236.25	1500	6.35	"
September 30, 1930	"	4,566,800	228.34	"	6.57	"
December 31, 1930	"	4,812,000	240.60	"	6.23	"
March 31, 1931	"	4,642,200	232.11	"	6.46	"
June 30, 1931	"	4,822,400	241.12	"	6.22	"
September 30, 1931	"	4,640,200	232.01	1485	6.43	"
December 31, 1931	"	4,863,200	243.16	1390	5.74	"
March 31, 1932	"			1340		
June 30, 1932	A "	4,209,900	210.49	(Aug. 1) 130	0.65	"
September 30, 1932	"	2,848,400	142.42	(Nov. 1) 80	0.56	"
December 31, 1932	"	2,941,000	147.05	60	0.41	"
March 31, 1933				(Feb. 1) 38		
June 30, 1933						
September 30, 1933						
December 31, 1933						
March 31, 1934						
June 30, 1934						
September 30, 1934						

* Increase in shares caused by 33 1/3% stock dividend paid in January 1930.

A Acquired Liberty National Bank by offering 1 share for each 180 shares of merged bank, but number of shares outstanding was not increased.

Dividends, pd. semiannually Jan. and July 1. 1929 to 1931, inclusive, 10% each year; Jan. 1, 1932 2½%, none since. In addition, extra dividends of 5% each have been paid Jan. and July 1, 1929—through Jan. 1, 1932. None since. Jan. 20, 1930, 33 1/3% stock dividend.

In addition Harriman Securities Corp. has paid following dividends, Jan. 3, 1929, 15%; July 5, 1929, 20%; Jan. and July, 1930 and 1931 and Jan. 8, 1932, $7.50 each.

None since.

[fol. 144] DEFENDANT'S EXHIBIT B

The Harriman National Bank & Trust Co. of the City of New York

$3,202.50. New York, Jan. 3, 1931.

Credit Harriman Securities Corp. Thirty-two hundred and two—50/100 Dollars For div. payable 1/3/31 on 183 sh. Harr. n/b & Tr. Co. n/o Raymond Kelly nominee.

F. R. ——, Cashier.

(Stamped:) 3 Jan 3 1931.

Deposited to Account of Harriman Securities Corpn. in The Harriman National Bank and Trust Company of the City of New York

New York, July 3, 1931.

Please List Each Check Separately

	Dollars	Cents
Bills		
Gold		
Silver		
Checks	4882	50

[fol. 145] HNBk.

Dividend
Checked By
Footed By

(Stamped:) 3 July 3 1931.

Deposited to Account of Harriman Securities Corp. in The Harriman National Bank and Trust Company of the City of New York

New York. July 7, 1930.

Please List Each Check Separately

	Dollars	Cents
Bills		
Gold		
Silver		
Checks		
M. H. O. Co. Inc.	916	67
L. Place Holding	34 366	68
	35 283	35
Div. Checks	2 782	50
	17	50
Checked By	38 083	35
Footed By		

[fol. 146] STIPULATION RE SUSPENSE ACCOUNT

(Same Title)

It is hereby Stipulated and Agreed by and between the attorneys for the plaintiff and the attorneys for the defendants herein that the excerpts from the suspense account printed below shall be deemed in evidence.

Dated, February 6, 1936.

Greenbaum, Wolff & Ernst, Attorneys for Plaintiff.
Conboy, Hewitt, O'Brien & Boardman, Attorneys for Defendants.

[fol. 147]
Account

Harriman Securities Corp. Suspense Account

Date 1930	Bought or Rec'd	Securities Sold or Del'd	Description	Debit	Credit	Balance Brought Forward
Oct. 29		10	CH JR 26		15 020 00	
Oct. 29		1	CH JR 26		1 495 00	
Oct. 29		1	CH JR 26		1 500 00	
Oct. 29		2	CH JR 26		3 000 00	
Oct. 29		1	CH JR 26		1 500 00	
Oct. 29		1	CH JR 26		1 500 00	
Oct. 29		1	CH JR 26		1 500 00	
Oct. 29		1	CH JR 26		1 500 00	
Oct. 29		5	CH JR 26		7 375 00	
Oct. 29		10	CH JR 26		14 750 00	147 136 00
Oct. 30		5	CH JR 27		7 510 00	
Oct. 30		2	CH JR 27		3 000 00	
Oct. 30		1	CH JR 27		1 500 00	
Oct. 30		1	CH JR 27		1 500 00	
Oct. 30		1	CH JR 27		1 500 00	
Oct. 30		5	CH JR 27		7 500 00	
Oct. 30		5	CH JR 27		7 500 00	117 126 00
Oct. 30		1	CH JR 27		1 500 00	115 626 00
Oct. 30	5		CR JR 12	7 425 00		
Oct. 30	5		CR JR 12	7 450 00		130 501 00
Oct. 31		10	CH JR 27		15 020 00	
Oct. 31		10	CH JR 27		15 020 00	
Oct. 31		2	CH JR 27		3 005 00	
Oct. 31		1	CH JR 27		1 512 00	
Oct. 31		1	CH JR 27		1 512 00	
Oct. 31		1	CH JR 27		1 512 00	
Oct. 31		1	CH JR 27		1 512 00	
Oct. 31		2	CH JR 27		3 024 00	
Oct. 31		10	CH JR 27		15 002 00	73 382 00
Oct. 31	1		CR JR 12	1 512 00		

Account

Harriman Securities Corp. Suspense Account—Continued

Date 1930	Bought or Rec'd	Securities Sold or Del'd	Description	Debit	Credit	Balance Brought Forward
Oct. 31						
Nov. 3	5		CR JR 12	7 500 00		82 394 00
Nov. 3		5	CH JR 27		7 497 00	
Nov. 3		2	CH JR 27		3 002 00	
Nov. 3		1	CH JR 27		1 500 00	
Nov. 3		10	CH JR 27		14 994 00	
Nov. 3		3	CH JR 27		4 500 00	
Nov. 3		1	CH JR 27		1 500 00	
Nov. 3		1	CH JR 27		1 500 00	47 901 00
[fol. 148]	5		CR JR 13	7 450 00		55 351 00
1391						
Jan. 16						
Jan. 17		13	TICKET		19 695 00	00
Jan. 19	4		CR JR 30	6 020 00		6 020 00
Jan. 20		2	CH JR 46		3 010 00	3 010 00
Jan. 20	5		CR JR 30	7 500 00		
Jan. 20	5		CR JR 30	7 525 00		
Jan. 21	5		CR JR 30	7 575 00		25 610 00
Jan. 21	1		TICKET	1 502 50		27 112 50
Jan. 21		33	CH JR 47		49 512 50	22 400 00
Jan. 21	5		CR JR 31	7 500 00		
Jan. 22	10		CR JR 31	14 900 00		00
Jan. 22	5		CR JR 31	7 475 00		7 475 00
Jan. 23		5	CH JR 47		7 475 00	00
Jan. 26	5		CR JR 31	7 500 00		7 500 00
Jan. 27	3		CR JR 31	4 515 00		12 015 00
Jan. 27		1	CH JR 48		1 500 00	
Jan. 28		1	CH JR 48		1 500 00	9 015 00
Jan. 28	49		TICKET	73,622 50		82 637 50
		55	CH JR 48		82 652 50	15 00

Jan.	28						
Jan.	28		1	CH JR 48		1 500 00	1 515 00
Jan.	29	1		CR JR 32	1 515 00		00
Jan.	29		1	CH JR 48		1 500 00	1 500 00
Jan.	30	1		CR JR 32	1 500 00		00
Jan.	30	3		CR JR 33	4 500 00		4 500 00
Feb.	2		3	TICKET		4 500 00	00
Feb.	2		1	CH JR 49		1 500 00	1 500 00
Feb.	3	1		CR JR 33	1 500 00		00
Feb.	3	8		TICKET	12 020 00		12 020 00
Feb.	3		2	CH JR 49		3 005 00	
Feb.	3		1	CH JR 49		1 502 50	
Feb.	3		2	CH JR 49		3 005 00	
Feb.	5		3	CH JR 49		4 507 50	00
		1		CR JR 34	1 500 00		1 500 00
							Brought Forward

[fol. 149] In United States District Court

Stipulation Settling Bill of Exceptions

It is hereby stipulated by and between the parties hereto that the foregoing bill of exceptions is correct in every particular, that it includes all of the evidence in the cause and that it may be duly signed, settled and allowed by Hon. Alfred C. Coxe, United States District Judge, who presided at the trial of this cause.

Dated Feb. 11, 1936.

Greenbaum, Wolff & Ernst, Attorneys for Plaintiff.
Conboy, Hewitt, O'Brien & Boardman, Attorneys for Defendants.

In United States District Court

Certificate to Bill of Exceptions

This is to certify that the foregoing bill of exceptions tendered by the plaintiff is correct in every particular, contains all the evidence and is hereby settled and allowed and made a part of the record in this cause and ordered to be filed.

Dated Feb. 13, 1936.

Alfred C. Coxe, United States District Judge.

[fol. 150] In United States District Court

Petition for Appeal

To the Honorable Judges of the United States District Court for the Southern District of New York:

Your petitioner Henry E. Oppenheimer, the plaintiff above named, feeling himself aggrieved by the final judgment of this court entered herein in favor of The Harriman National Bank and Trust Company and Henry E. Cooper, as Conservator of The Harriman National Bank and Trust Company of The City of New York, the above named defendants, and against the plaintiff, on the 14th day of October, 1935, does hereby appeal therefrom to the Circuit Court of Appeals for the Second Circuit, for the reasons set

forth in the assignment of errors filed herewith and he hereby prays that an appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Second Circuit, under the rules of such court in such cases made and provided.

Petitioner further prays that the amount of security for costs be fixed by order allowing this appeal.

Dated, New York, November 29th, 1935.

Greenbaum, Wolff & Ernst, Attorneys for Plaintiff, Office & P. O. Address, 285 Madison Avenue, Manhattan Borough, New York City.

[fol. 151] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL

Upon reading the petition for appeal and the assignment of errors filed herein November 29th, 1935, it is

Ordered that an appeal by the plaintiff to the United States Circuit Court of Appeals for the Second Circuit from the final judgment entered herein on the 14th day of October, 1935 in favor of the defendants and against the plaintiff, be and the same is hereby allowed and it is further

Ordered that the amount of the security for costs to be given by the appellant herein is fixed at the sum of $250.

Dated, New York, November 30th, 1935.

Wm. Bondy, United States District Judge.

[fol. 152] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS

To the Honorable Judge of said Court:

Now comes Henry E. Oppenheimer, the plaintiff in the above case, and files the following assignment of errors upon which he will rely in the prosecution of the appeal in the above entitled action.

1. The Court committed error in admitting over the objection and exception of the plaintiff testimony concerning transactions between defendant, The Harriman National Bank & Trust Company, and the Harriman Securities Corporation.

2. The court committed error in denying plaintiff's motion to strike out all the testimony with regard to the transactions between defendant, The Harriman National Bank & Trust Company, and the Harriman Securities Corporation; to which plaintiff duly excepted.

3. The court committed error in granting defendants' motion to direct a verdict against the plaintiff; to which plaintiff duly excepted.

4. The court committed error in denying plaintiff's motion to direct a verdict for the plaintiff; to which the plaintiff duly excepted.

5. The court committed error in denying plaintiff's motion to set aside the verdict on the ground that it was against the law and against the weight of evidence; to which plaintiff duly excepted.

6. The court committed error in holding that the defendant, The Harriman National Bank & Trust Company, was [fol. 153] not enriched by the sale of the bank stock to the plaintiff.

7. The court committed error in holding that it was necessary for the plaintiff to establish as part of his case that defendant, The Harriman National Bank & Trust Company, was enriched by the sale of the bank stock to the plaintiff.

8. The court committed error in holding that neither Mr. Harriman nor Mr. Williamson had any actual or apparent authority of defendant, The Harriman National Bank & Trust Company, to make the representations to the plaintiff in connection with the sale of the bank stock.

Wherefore plaintiff Henry E. Oppenheimer prays that the judgment in this cause for the errors aforesaid may be reversed by the United States Circuit Court of Appeals for the Second Circuit.

Greenbaum, Wolff & Ernst, Attorneys for Plaintiff,
Office & P. O. Address, 285 Madison Avenue,
Borough of Manhattan, City of New York.

[fol. 154] Citation, in usual form, omitted in printing.

[fol. 155] IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD

It is hereby stipulated and agreed that the foregoing is a true copy of the transcript of the record in said District Court in the above entitled matter as agreed to by the parties, and that comparison thereof by the Clerk is hereby waived.

Dated Feb. 11, 1936.

Greenbaum, Wolff & Ernst, Attorneys for Plaintiff.
Conboy, Hewitt, O'Brien & Boardman, Attorneys for Defendants.

[fol. 156] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 157] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1935

Argued April 17, 1936. Decided Aug. 10, 1936

No. 350

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

v.

THE HARRIMAN NATIONAL BANK & TRUST COMPANY OF THE CITY OF NEW YORK and Henry E. Cooper as Conservator of the Harriman National Bank and Trust Company, Defendants-Appellees

Appeal from the District Court of the United States for the Southern District of New York

Before Manton, Swan, and Augustus N. Hand, Circuit Judges

Action at law to recover from the Harriman National Bank & Trust Company and Henry E. Cooper as conservator of said bank the purchase price of stock which the plaintiff was induced to purchase from the bank by fraud. From a judgment directed for the defendants after both parties had moved for a directed verdict, the plaintiff appeals. Judgment reversed.

Greenbaum, Wolff & Ernst, of New York City (Edward S. Greenbaum, Newman Levy, and Benjamin Kaplan, all of New York City, of counsel), for appellant.

Conboy, Hewitt, O'Brien & Boardman, of New York City (Martin Conboy, David Asch, and William J. Butler, all of New York City, of counsel), for appellees.

Frederic P. Warfield, of New York City (Alfred L. Becker, of New York City, of counsel), for Louis J. Ehret as amicus curiæ.

SWAN, Circuit Judge:

The plaintiff, Henry E. Oppenheimer, was a depositor in the Harriman National Bank, of which Joseph W. Harriman was president and F. S. Williamson was a vice president. On October 28, 1930, Williamson called upon Oppen-

heimer, presenting a letter of introduction on bank stationery signed by Harriman. Relying upon statements made in the letter and oral statements made by Williamson, Oppenheimer was induced to purchase ten shares of stock of the bank at the price of $15,120. On November 1, he received from the bank a bill therefor which he paid by a check drawn upon his account in the bank and payable to its order. Another vice-president of the bank, Mr. Austin, acknowledged receipt of his check and sent him a stock certificate for the purchased shares. His check was marked "Paid" and the bill wes receipted. During 1931 and in January, 1932, Oppenheimer received dividends on the stock aggregating $525. He sold two shares in May, 1932, for the price of $2,408 and thereafter received a new certificate for his remaining eight shares. In the spring of 1933, when he saw a newspaper reference to the Singleton case,* he discovered that the statements which had induced his purchase were false and fraudulent. Thereupon, on May 6, 1933, he gave notice of rescission, tendered back the certificate, and demanded that his account in the bank be credited with the amount of his payment, less the sums received by him as dividends and from his sale of the two shares disposed of. The bank in the meantime had closed its doors and the defendant Cooper had been appointed its conser-
[fol. 158] vator. The plaintiff's demand for rescission being rejected, this action was instituted on May 31, 1933. It seeks judgment for $12,187 with interest from November 1, 1930. During pendency of the action, a receiver was appointed for the bank, but he has not become a party to this suit.

The amended answer of the defendants, besides a general denial, sets up the affirmative defenses of ratification after knowledge of the fraud, and of laches. At the trial the defendants were allowed further to amend "tentatively" by setting up that on and after March 4, 1933, the bank was insolvent and that debts incurred since November 1, 1930, cannot be paid out of its assets. The District Court reserved decision on whether this tentative amendment constituted a defense and never formally ruled upon it.

The defendants' proof tended to show that the stock purchased by Oppenheimer was not owned by the bank but by

* Singleton v. Harriman, 152 Misc. 323, 272 N. Y. S. 905, affirmed, 241 App. Div. 857, 271 N. Y. S. 996.

its affiliate, Harriman Securities Corporation. The bank maintained in its bond department an account known as "Harriman Securities Corporation Suspense Account," in which were reflected purchases and sales of Harriman Bank stock made for the account of said affiliate. To the extent that the account was long of the stock it represented an indebtedness of the affiliate to the bank. Certificates of stock purchased for the suspense account were put in the name of one Kelly, not an employee of the bank, as nominee of the Securities Corporation. The ten shares sold to Oppenheimer stood in Kelly's name, and the suspense account was credited with the sum received by the bank from Oppenheimer, less $100 retained by the bank as its commission on the sale. It is conceded, however, that Oppenheimer had no knowledge of any transactions between the bank and its affiliate and believed that he was dealing with the bank as a principal in his purchase of the stock. It is also conceded that a fraud was practised upon him by Harriman and Williamson, the dispute as to this being only whether the bank is chargeable with their fraud.

At the conclusion of the evidence both parties moved for a directed verdict. The District Judge granted the defendants' motion on the ground (1) that the bank was not enriched by the sale of the stock to Oppenheimer, and (2) that neither Harriman nor Williamson had actual or apparent authority to make the representations which induced his purchase. From the judgment entered pursuant to the directed verdict the plaintiff has appealed.

At the outset we may conveniently dispose of the bank's argument that recovery by the plaintiff is prohibited by the provisions of section 24 of the National Banking Act as amended by the Act of February 25, 1927 (44 Stat. 1226 § 2). This amendment provided that buying and selling of bonds, notes, or debentures, commonly known as investment securities, should be limited to buying and selling "without recourse." To say the least, it is highly doubtful whether this language can be stretched to include the purchase and sale of stock, and particularly of the bank's own stock. Compare the amendment of August 23, 1935, which uses the words "securities and stock" (49 Stat. 709, § 308 [12 U. S. C. A. § 24]). But assuming that it can, the statute would still be inapplicable to the case at bar. The evil aimed at by the statute was the incurring of liability by the bank

in consequence of an indorsement, guaranty, or repurchase agreement with respect to securities it sold. Awotin v. Atlas Exchange Bank, 295 U. S. 209, 2— 55 S. Ct. 674, 79 L. Ed. 1393. It had nothing to do with tort liability arising out of fraud; nor can it be construed to forbid incurring the liability imposed by law when a contract of sale, induced by fraud, is rescinded.

Much of the argument in the briefs is directed to the controverted question whether the bank, as a principal, sold its own stock, or, as an agent, sold stock owned by the Securities Corporation. We cannot see that this dispute is at all material here. In either event, the plaintiff dealt only with the bank; he had no knowledge that any third party was involved. If the bank sold stock belonging to its affiliate, as the defendants contend, it sold for an undisclosed principal and was itself a party to the contract. American Law Institute, Restatement of Agency, § 321. When an agent for an undisclosed principal induces a sale by fraud, he must account for the purchase price, if the contract is rescinded, even though he has paid it over to his principal. Id., § 341; McClure v. Central Trust Co., 165 N. Y. 108, 58 N. E. 777, 53 L. R. A. 153. Therefore, whether the stock [fol. 159] belonged to the bank or to the Securities Corporation, the fundamental issue is the same, namely, whether the fraudulent representations of Harriman and Williamson are attributable to the bank.

Despite the defendants' contention to the contrary, we think it indubitably plain that these officers had apparent, if not actual, authority to make the sale on behalf of the bank. If the stock was property of the bank, its acquisition of it may have been ultra vires, for only in special circumstances may a bank purchase its own stock. 12 U. S. C. A. § 83. Nevertheless a corporation may transfer title to property which it was ultra vires to acquire (Lantry v. Wallace, 182 U. S. 536, 553, 21 S. Ct. 878, 45 L. Ed. 1218); and the plaintiff is not charged with notice that its ownership was unlawful, since under some circumstances it could be lawfully acquired. National Bank & Loan Co. v. Petrie, 189 U. S. 423, 424, 23 S. Ct. 512, 47 L. Ed. 879. The sale appeared to be lawful, and the bank's president and vice president had apparent authority to represent it in negotiating such sale. If, on the other hand, the stock belonged to the Securities Corporation, these officers would

have actual authority to cause the bank to make a sale as agent for the owner, whereby a commission was earned for the bank and the proceeds of the sale were applied to reduce the owner's indebtedness to the bank. Hence whichever the ownership of the stock, the officers who negotiated with the plaintiff had at least apparent authority to make the sale. If this be so, their representations incidental to the sale by the bank (either as principal or agent) are attributable to the bank, since the plaintiff had no notice that the representations were unauthorized. Salter v. Williams, 244 F. 126, (C. C. A. 3); American Law Institute, Restatement of Agency, §§ 257, 258; 7 Michie, Banks and Banking, § 173.

Therefore, if the bank were still a going concern, we should entertain no doubt that the plaintiff would have the right to rescind his purchase unless he has lost it by laches, or estoppel, which has not been contended. National Bank & Loan Co. v. Petrie, 189 U. S. 423, 23 S. Ct. 512, 47 L. Ed. 879; American Law Institute, Restatement, Contracts, §§ 476 (1), 480 (1). Nor would the power to rescind be lost by reason of his disposal of two of the purchased shares before discovery of the fraud, since prejudice to the bank is avoided by crediting it with the proceeds thereof, American Law Institute, Restatement, Contract, § 480 (2) (e); J. C. Miller Estate, Inc., v. Drury, 120 Wash. 628, 208 P. 77, 79; Henninger v. Heald, 52 N. J. Eq. 431, 29 A. 190, 193, affirmed 53 N. J. Eq. 694, 35 A. 1130; Harnden v. Hadfield, 113 Kan. 525, 215 P. 441, 442; Bagnall v. Frank Fehr Brewing Co., 203 Mo. App. 635, 221 S. W. 793, 795. See Ufland & Co. v. McMahon, 215 App. Div. 267, 279, 213 N. Y. S. 519. But the amended answer alleges that the bank was insolvent on and after March 4, 1933. This was prior to the plaintiff's demand for rescission on May 6, 1933, and the appellees contend that supervening insolvency is enough to preclude rescission.

The record contains a concession that the bank was insolvent on March 3, 1933. Since insolvency antedated the plaintiff's demand for rescission, he cannot thereby change his status from that of shareholder to that of creditor to the detriment of general creditors. Under the federal statute as to shareholders' liability (12 U. S. C. A. § 63), it is well settled that a defrauded shareholder, who had not rescinded at the time of the bank's insolvency, cannot escape

payment of an assessment made by the comptroller to meet the deficiency of assets available for the payment of all who were creditors when the bank failed. Scott v. Deweese, 181 U. S. 202, 213, 21 S. Ct. 585, 45 L. Ed. 822; Lantry v. Wallace, 182 U. S. 536, 549, 21 S. Ct. 878, 45 L. Ed. 1218; Ryan v. Mt. Vernon Nat. Bank, 224 F. 429, 430 (C. C. A. 2); Anderson v. Cronkleton, 32 F. (2d) 170 (C. C. A 8). By necessary implication the statute renders not only the fund raised by assessment, but also all of the insolvent bank's assets security for the payment of those who were creditors at the time of the bank's failure. Obviously, one who is liable to such creditors as a stockholder for assessment can neither reduce the amount he has paid as assessment nor come in to share assets he is bound to leave to the prior satisfaction of those creditors. In so far as Salter v. Williams, 244 F. 126 (C. C. A. 3), teaches the contrary, it overlooks the necessary implication of the liability statute in the case of insolvent national banks and [fol. 160] we cannot follow it. Conceivably, however, there may arise a situation in which after distribution to creditors of the bank's liquidated assets and the proceeds of the assessment, other hitherto dubious assets may realize sufficient to pay off fully the above-mentioned creditors and to leave a balance remaining to the bank. It is urged by the plaintiff that such a possibility exists here by reason of a suit brought by the receiver against certain banks on an alleged guaranty of the Harriman Bank's depositors. If by good fortune a balance should remain for distribution to shareholders, it would seem that the defrauded plaintiff should be paid in preference to distribution to nondefrauded shareholders. So, in effect, this court held in MacNamee v. Bankers' Union, 25 F. (2d) 614. See, also, Joyce & Co. v. Eifert, 56 Ind. App. 190, 105 N. E. 59. We conclude, therefore, that even if insolvency antedated the plaintiff's demand for rescission, rescission should be allowed as against the corporation, although the judgment will give the plaintiff no claim entitled to share in the assets of the receivership until after payment of all who were creditors when the bank became insolvent. Such a judgment will very likely have only an academic value, but such as it is the plaintiff would seem to be entitled to it. Accordingly, the judgment on appeal is reversed and the cause remanded, with directions to enter judgment for the plaintiff in conformity with this opinion.

[fol. 161] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 17th day of August, one thousand nine hundred and thirty-six.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

vs.

HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK et al., Defendants-Appellees

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed with costs and the cause remanded with directions to enter a judgment for the plaintiff in conformity with the opinion of this court. Further ordered that execution issue for the collection of said costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 162] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Henry E. Oppenheimer vs. Harriman National Bank and Trust Company of the City of New York. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 17, 1936. William Parkin, Clerk.

[fol. 163] [Stamp:] United States Circuit Court of Appeals, Second Circuit. Filed Aug. 20, 1936. William Parkin, Clerk.

14553

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

against

THE HARRIMAN NATIONAL BANK & TRUST COMPANY OF THE CITY OF NEW YORK and Henry E. Cooper as Conservator of the Harriman National Bank and Trust Company, Defendants-Appellees

PETITION FOR REHEARING

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Your petitioners, the defendants-appellees above named, pray for rehearing of the appeal in the above-entitled cause, in accordance with the provisions of Rule XXVI of the Rules of this Court, and/or for the correction of the opinion of the Court and a resettlement of the order for the issuance of mandate herein, dated August 17, 1936, in accordance with such corrected opinion, upon the following grounds, and solely in the respects hereinafter indicated, to wit:

In the opinion of this Court by Circuit Judge Swan, Circuit Judges Manton and A. N. Hand concurring, a copy of [fol. 164] which is hereto annexed, marked "Schedule A", it was held that

"if insolvency antedated the demand for rescission, the plaintiff cannot thereby change his status from that of shareholder to that of creditor to the detriment of general creditors" (p. 11, infra).

And it was further held that in such event the only judgment to which plaintiff is entitled is one against the corporation itself, which would give plaintiff the right, and only the right, to be paid in preference to non-defrauded stock-

holders if and when the creditors had been paid in full (pp. 11-13, infra).

The opinion further states that

"The record does not disclose when the bank became insolvent" (p. 11, infra).

and for that reason it has been ordered that the judgment be reversed and the cause remanded for a new trial.

The date of insolvency, antedating the demand for rescission, is conceded in the record.

The demand for rescission was made on May 6, 1933 (Rec., fols. 18, 85-7, Pltff.'s Ex. 7, pp. 72-3, Opinion, p. 11, infra).

The Bank was insolvent on March 3, 1933, as appears from the following, at folios 140-141 of the record:

"Mr. Asch: All right. Now, will it further be conceded that on March 3, 1933, The Harriman National Bank and Trust Company was insolvent?

[fol. 165] "Mr. Levy: What is the date?

"Mr. Asch: The date of the bank holiday.

"Mr. Levy: Oh, yes."

Upon the foregoing facts, and in accordance with the opinion of this Court, the judgment of the District Court so far as it dismisses, with costs, the complaint as against the defendant Henry E. Cooper as Conservator of The Harriman National Bank and Trust Company of the City of New York, should be affirmed, with costs of this appeal, and the judgment so far as it dismisses the complaint as against the defendant The Harriman National Bank and Trust Company of the City of New York should be reversed, and judgment entered with appropriate costs against the said Bank, collectible only out of the assets of said Bank remaining after all depositors and creditors, and the expenses of liquidation, have been paid in full.

Wherefore, upon the foregoing grounds, your petitioners pray that this Court grant relief as aforesaid.

Dated, New York, August 19, 1936.

Respectfully submitted, The Harriman National Bank and Trust Company of the City of New York, Henry E. Cooper, As Conservator of The Harriman National Bank and Trust Company of the City of New York, by David Asch, Counsel for Petitioners.

[fol. 166] I hereby certify that I have examined the foregoing petition and that in my opinion the petition is well founded in point of law and is not interposed for the purpose of delay.

Dated, New York, August 19, 1936.

David Asch, Counsel for Petitioners.

[fol. 167] [Stamp:] United States Circuit Court of Appeals, Second Circuit. Filed Sep. 15, 1936. William Parkin, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

against

THE HARRIMAN NATIONAL BANK & TRUST COMPANY OF THE CITY OF NEW YORK and Henry E. Cooper as Conservator of The Harriman National Bank & Trust Company, Defendants-Appellees

PETITION FOR REHEARING

To the Honorable Judges of the United States Circuit Court of Appeals for the Second Circuit:

Comes now the plaintiff-appellant above named, and respectfully presents his petition for a rehearing pursuant to Rule 29 of the Rules of this Court in order that he may be permitted to address himself to an issue decided by this Court which was not briefed or argued by him (or, indeed, by defendants-appellees), as it was not deemed relevant upon this appeal or within the scope of the Court's jurisdiction. The issue referred to is whether plaintiff's judgment against The Harriman National Bank & Trust Company and Henry E. Cooper as Conservator of said Bank will share equally with other creditors' claims in the assets of the Bank or be subordinated to them.

[fol. 168] This is an action at law brought by the plaintiff, a depositor of The Harriman National Bank & Trust Company, upon a completed rescission, to recover from the Bank and Henry E. Cooper as Conservator of said Bank,

the price paid for stock of the Bank which he was induced to purchase through fraudulent representations of the Bank. The stock was paid for by a withdrawal by plaintiff from his deposit account with the Bank. He seeks in this action to be reinstated to the position he would have been in if he had not been defrauded, that is, to have his deposit account credited with that amount.

A trial was had before Judge Coxe and a jury, and after cross motions for a directed verdict, a judgment was entered upon an order directing a verdict for the defendants. From that judgment of the District Court plaintiff appealed to this Court.

Since this action is at law, plaintiff-appellant assumed that the only issue before the Court, as in all other actions of law, was whether or not he was entitled to a money judgment against the defendants. The question whether his claim, based upon that judgment, ranked on a parity with other classes of claims, was not believed to be relevant on this appeal, but was deemed to be a matter to be determined in the first instance by the Comptroller of the Currency in appropriate proceedings. Indeed, in appellant's view of the law, it was a matter of considerable doubt whether the Court at this stage had jurisdiction to determine the question of priorities. See Riehle v. Margolies, 279 U. S. 218 (1929).

[fol. 169] For these reasons appellant deliberately refrained from considering the question of priority, expressly pointing out in his brief (p. 41) and reply brief (p. 19) that the "sole question in the present case is whether the plaintiff has a claim against the Bank, because of the fraud admittedly practiced upon him, as a depositor of the Bank," and that the "manner in which his claim is to be treated, how he shall rank with other classes of claimants and the like, are questions to be decided by the Comptroller of the Currency."

On August 15th last, this Court, per Swan, J., filed its opinion, and on August 26th its amendatory opinion, holding in substance that the plaintiff had a right to rescind as against the Bank after insolvency unless he had lost this right by laches or estoppel, which was not contended. It ordered that the judgment be reversed and directed that judgment be entered for the plaintiff.

The Court went further, however, and ruled that since insolvency of the Bank antedated plaintiff's demand for

rescission, his claim was junior and subordinate to those of other creditors of the Bank.

Reargument is sought on two grounds.

First Ground

The defendants did not plead insolvency. At the trial they attempted to amend their answer by alleging that the Bank was insolvent on March 3, 1933. To this proposed amendment plaintiff objected and the Court reserved decision thereon (fol. 43). The Court never passed on the amendment and throughout the trial the pleading remained [fol. 170] unamended and contained no allegation of insolvency. That question therefore was not in issue. At the trial the defendants asked whether it would be conceded that the Bank was "inslovent" on March 3, 1933 (fol. 140). This concession was made, but the plaintiff expressly refused to concede insolvency in the sense that the liabilities of the Bank exceeded its assets (fols. 157, 158).

In the original opinion filed by this Court on August 15th, the Court stated that the right of the plaintiff to share on a parity with those of other creditors of the Bank depended upon whether or not the demand for a rescission antedated the insolvency of the Bank. The Court's attention being called to the concession referred to above as to the "insolvency" of the Bank on March 3, 1933, it filed its amended opinion stating that the Bank's "insolvency" antedated the demand for rescission and consequently that plaintiff's claim was subordinate to those of other classes of claimants. This holding was made solely on the basis of the concession just referred to.

Though the question of "insolvency" was not in issue it is important under the amended ruling of this Court that the actual facts with regard thereto be determined. While it may be that the Bank was "insolvent" in the sense that it was not able to meet its current obligations, plaintiff never admitted that the Bank was "insolvent" in any other sense. Indeed, it is believed that the Bank was not "insolvent" in the true bankruptcy sense of excess of liabilities over assets, until long after plaintiff rescinded. Thus, in an action brought in the District Court by the Receiver [fol. 171] of the Bank against Arthur S. Allen, and others, the Receiver alleged in a verified complaint that "on or about October 16, 1933, the said Comptroller of the Cur-

rency duly found that the said Bank was insolvent and unable to pay its just and legal debts." This allegation by the Receiver appears to negative the fact of "insolvency" in the bankruptcy sense on March 3, 1933. Furthermore, we are informed that in an action brought by the Comptroller against the clearing house banks in the Supreme Court, New York County, it was proved that in June, 1936, the Bank had already paid a dividend to depositors of 76% and that it was in a position to pay an additional dividend of 10%, and that in addition to the assets required for that purpose it had received $750,000 from the National City Bank in settlement of a claim against it, and had other assets including a claim against directors to enforce which an action for an accounting seeking $6,000,000 is pending.

Plaintiff takes the position (a) that he concedes the Bank was not able to meet its current obligations on March 3, 1933—it was "insolvent" in the equity sense; but (b) that he does not concede there was an excess of liabilities over assets at the time he rescinded in May, 1933. On this latter question he desires a trial. Accordingly, he asks that this Court remand for trial the issue of fact thus presented, unless it is of the opinion that mere equity insolvency at the date of rescission is enough to cut off the plaintiff's right to share pari passu with other creditors. We do not believe this Court intended so to hold.

[fol. 172] Second Ground

As an additional and separate ground for reargument and correction, petitioner submits with deference that the ruling of this Court (whether "insolvency" be taken to mean "equity" or "bankruptcy" insolvency) is erroneous. It is his contention that his claim as a defrauded depositor and creditor of the Bank is on a par with other claims, regardless of whether insolvency antedated the recission. And waiving the question of the jurisdiction of this Court to decide the issue of priority in an action at law he is desirous of an opportunity to meet that issue on the merits.

The first ground for reargument and correction requires no further elaboration. The accompanying brief is addressed to the second ground only.

Wherefore, petitioner respectfully prays that a rehearing be granted and, upon such rehearing, for a ruling that the claim of the plaintiff shall share equally with those of

other creditors in the assets of the insolvent Bank, or for an order remanding the cause for a trial of the issue of the date of insolvency of the Bank, and, pending determination of this motion, for a stay of the mandate herein, and for such other relief as may be just and proper.

Dated, New York, September 15, 1936.

Respectfully submitted, Henry E. Oppenheimer, by Edward S. Greenbaum, Counsel for Petitioner.

[fol. 173] Certificate of Counsel

I hereby certify that I have examined the foregoing petition, which is presented in good faith and not for the purposes of delay, and that in my opinion it is well founded and is entitled to the favorable consideration of the Court.

Edward S. Greenbaum, Counsel for Plaintiff-Appellant.

[fol. 174] United States Circuit Court of Appeals for the Second Circuit

Henry E. Oppenheimer, Appellant,

against

The Harriman National Bank & Trust Company of the City of New York and Henry E. Cooper as Conservator of the Harriman National Bank and Trust Company, Appellees

Before Manton, Swan and A. N. Hand, Circuit Judges

Davis Asch, Esq., Counsel for Petitioners.

Per Curiam:

Petition for rehearing denied.

——— ———, Circuit Judges.

Filed Sept. 21/1936.

[fol. 175] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 21st day of September, one thousand nine hundred and thirty-six.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

vs.

HARRIMAN NATIONAL BANK & TRUST COMPANY OF THE CITY OF NEW YORK et al., Defendants-Appellees

A petition for a rehearing having been filed herein by counsel for the defendants,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 176] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Henry E. Oppenheimer vs. Harriman National Bank & Trust Company, etc., et al. Order. United States Circuit Court of Appeals, Second Circuit. Filed Sep. 21, 1936. William Parkin, Clerk.

[fol. 177] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

HENRY E. OPPENHEIMER, Appellant,

against

THE HARRIMAN NATIONAL BANK & TRUST COMPANY OF THE CITY OF NEW YORK and Henry E. Cooper as Conservator of The Harriman National Bank & Trust Company, Appellees

Before Manton, Swan and A. N. Hand, Circuit Judges

Greenbaum, Wolff & Ernst, Esqs., Attorneys for Appellants. Edward S. Greenbaum, Newman Levy, of Counsel.

Per CURIAM:

Petition for rehearing denied.

——, Circuit Judges.

Filed Oct. 14/1936.

[fol. 178] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 14th day of October, one thousand nine hundred and thirty-six.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

vs.

HARRIMAN NATIONAL BANK & TRUST COMPANY OF THE CITY OF NEW YORK et al., Defendants-Appellees

A petition for a rehearing having been filed herein by counsel for the plaintiff,

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 179] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Henry E. Oppenheimer vs. Harriman National Bank & Trust Company of the City of New York. Order. United States Circuit Court of Appeals, Second Circuit. Filed Oct. 14, 1936. William Parkin, Clerk.

[fol. 180] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

against

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK et al., Defendants-Appellees

SIRS:

Please Take Notice that upon the amended opinion filed herein on the 26th day of August, 1936, and upon all the proceedings heretofore had herein, the defendants-appellees will move this Court at a term thereof to be held in the United States Court House, Foley Square, in the Borough of Manhattan, New York City, on October 19, 1936, at 10:30 o'clock A. M., or as soon thereafter as counsel can be heard, for an order in the form annexed hereto re-settling the order heretofore entered in the office of the Clerk of this Court on the 17th day of August, 1936, and for such other and further relief as to the Court may seem proper.

Yours, etc., Conboy, Hewitt, O'Brien & Boardman, Attorneys for Defendant-Appellees, Office & P. O. Address, 39 Broadway, Borough of Manhattan, New York City.

To Greenbaum, Wolff & Ernst, Esqs., Attorneys for Plaintiff-Appellant, 285 Madison Avenue, New York City.

[fol. 181] At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the — day of September, One Thousand Nine Hundred and Thirty-six.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

against

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK et al., Defendants-Appellees

An order having been entered herein on the 17th day of August, 1936, upon the opinion of this Court filed August 10, 1936, and the said opinion of this Court having been amended by order of this Court, such amendment having been filed on the 26th day of August, 1936,

Now, on motion of Conboy, Hewitt, O'Brien & Boardman, attorneys for defendants-appellees, it is

Ordered that the said order dated August 17, 1936 be and the same hereby is re-settled so as to read as follows:

[fol. 182] At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 17th day of August, One Thousand Nine Hundred and Thirty-six.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

against

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK et al., Defendants-Appellees

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby

Ordered, Adjudged and Decreed that the judgment of said District Court, so far as it dismisses the complaint as against the defendant The Harriman National Bank and Trust Company of the City of New York, be and it hereby is reversed, with costs, and judgment, as demanded in said complaint with costs, be entered against the said Bank,

[fol. 183] collectible, both as to such judgment and costs of appeal, only out of the assets of said Bank remaining for distribution to stockholders after all depositors and creditors and the expenses of liquidation have been paid in full; and it is

Further Ordered, Adjudged and Decreed, that the said judgment of the said District Court, so far as it dismisses, with costs, the complaint as against the defendant Henry E. Cooper, as Conservator of The Harriman National Bank and Trust Company of the City of New York, be and it hereby is affirmed, with costs of this appeal; and it is

Further Ordered, Adjudged and Decreed that the cause be remanded with directions to enter judgment in conformity herewith and that a mandate issue to the said District Court in accordance with this decree.

[fol. 183½] [Endorsed:] Clerk's Index. No. —. —— —, 193-. United States Circuit Court of Appeals for the Second Circuit. Henry E. Oppenheimer, Pl'ff-Appellant, against The Harriman National Bank and Trust Company, etc., et al., Def'ts-Appellees. Notice of Motion. Conboy, Hewitt, O'Brien & Boardman, Attorneys for Def'ts-Appellees, Office and Post-Office Address, 39 Broadway, New York City. Due and timely service of a copy of the within is hereby admitted.

Dated, New York, —— —, 19—. —— ——, Attorney for ——.

[fol. 184] At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the —day of October, One Thousand Nine Hundred and Thirty-six.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

HENRY E. OPPENHEIMER, Plaintiff-Appellant,
against
THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK et al., Defendants-Appellees

PLAINTIFF-APPELLANT'S PROPOSED ORDER

An order having been entered herein on the 17th day of August, 1936, upon the opinion of this court filed August 10,

1936, and this court having filed an amendatory opinion on the 26th day of August, 1936, it is

Ordered, that the said order dated August 17, 1936, be and the same hereby is resettled so as to read as follows:

[fol. 185] "At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 17th day of August, One Thousand Nine Hundred and Thirty-six.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Augustus N. Hand, Circuit Judges.

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

against

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK et al., Defendants-Appellees.

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby

Ordered, Adjudged and Decreed, that the judgment of said District Court be and it hereby is reversed with costs; and it is further

[fol. 186] Ordered, Adjudged and Decreed, that judgment for the amount demanded in the complaint be entered against the defendants, The Harriman National Bank and Trust Company of the City of New York and Henry E. Cooper as Conservator of said Bank, collectible out of the assets of the receivership after payment in full of all who were creditors when the Bank became insolvent; and it is further

Ordered, Adjudged and Decreed, that plaintiff have judgment for costs and that execution issue forthwith for the collection of said costs, and it is further

Ordered, Adjudged and Decreed, that a mandate issue to the said District Court in accordance with this decree.

——, Clerk."

[fol. 186½] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Henry E. Oppenheimer, Plaintiff-Appellant, against The Harriman National Bank and Trust Company of the City of New York et al., Defendants-Appellees. Plaintiff-Appellant's Proposed Order. Greenbaum, Wolff & Ernst, Attorneys for Plaintiff-Appellant, No. 285 Madison Avenue, Borough of Manhattan, New York City.

[fol. 187] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1935

Motion Argued Oct. 19, 1936. Decided Nov. 2, 1936

No. 350

HENRY E. OPPENHEIMER, Appellant,

v.

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK et al., Appellees

Before Manton, L. Hand, and Swan, Circuit Judges

Appeal from the District Court of the United States for the Southern District of New York

Per CURIAM:

The order of this court will be resettled to read as follows:

"Ordered, adjudged, and decreed, that the judgment of the District Court be reversed; and it is further

"Ordered, adjudged, and decreed that the action be dismissed as to the defendant Henry E. Cooper as conservator of the Harriman National Bank & Trust Company of the City of New York inasmuch as it appears that a receiver was appointed for said bank during the pendency of said action; and it is further

"Ordered, adjudged, and decreed that judgment for the amount demanded in the complaint be entered against the defendant the Harriman Bank & Trust Company of the City of New York collectible out of the assets of the receivership after payment in full of all who were creditors

when the said bank became insolvent; and it is further

"Ordered, adjudged, and decreed that plaintiff have judgment for costs to be paid in due course out of the receivership estate, and it is further

"Ordered, adjudged, and decreed, that the cause be remanded and a mandate issue to said District Court in accordance with this decree."

[fol. 188] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 9th day of November, one thousand nine hundred and thirty-six.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

HENRY E. OPPENHEIMER, Plaintiff-Appellant,

vs.

THE HARRIMAN NATIONAL BANK AND TRUST COMPANY OF THE CITY OF NEW YORK, et al., Defendants-Appellees

A motion having been made herein to resettle the order for mandate of this Court heretofore entered herein,

Upon consideration thereof it is

Ordered that said order for mandate be and hereby is resettled to read as follows;

"Ordered, Adjudged and Decreed, that the judgment of the District Court be reversed; and it is further

Ordered, Adjudged and Decreed that the action be dismissed as to the defendant Henry E. Cooper as Conservator of The Harriman National Bank and Trust Company of the City of New York in as much as it appears that a receiver was appointed for said Bank during the pendency of said action; and it is further

Ordered, Adjudged and Decreed that judgment for the amount demanded in the complaint be entered against the defendant The Harriman Bank and Trust Company of the City of New York collectible out of the assets of the

receivership after payment in full of all who were creditors when the said bank became insolvent; and it is further

Ordered, Adjudged and Decreed that plaintiff have judgment for costs to be paid in due course out of the receivership estate, and it is further

Ordered, Adjudged and Decreed, that the cause be remanded and a mandate issue to said District Court in accordance with this decree."

Wm. Parkin, Clerk.

[fol. 189] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. Henry E. Oppenheimer vs. Harriman National Bank and Trust Company of the City of New York. Order. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 9, 1936. William Parkin, Clerk.

[fol. 190] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 189, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Henry E. Oppenheimer, Plaintiff-Appellant, against The Harriman National Bank and Trust Company of the City of New York et al., Defendants-Appellees, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this seventh day of December, in the year of our Lord one thousand nine hundred and thirty-six, and of the Independence of the said United States the one hundred and sixty-first.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 191] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 588

ORDER ALLOWING CERTIORARI—Filed February 8, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 192] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1936

No. 670

ORDER ALLOWING CERTIORARI—Filed February 8, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File Nos. 41,128, 41,210. U. S. Circuit Court of Appeals, Second Circuit. Term No. 588. Henry E. Oppenheimer, petitioner, vs. The Harriman National Bank and Trust Company of the City of New York, et al. Filed December 22, 1936. Term No. 670. The Harriman National Bank and Trust Company of the City of New York, petitioner, vs. Henry E. Oppenheimer. Petitions for writs of certiorari and exhibit thereto. Filed January 23, 1937. Term Nos. 588, O. T., 1936, 670, O. T. 1936.